

Exhibit 1

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

PATRICK BRADY, et al.,

Plaintiffs

Vs.

CIVIL ACTION
NO. 02-2917 (JEI)

AIR LINE PILOTS ASSOCIATION,
INTERNATIONAL,

STATUS CONFERENCE

Defendant.

UNITED STATES COURTHOUSE
ONE JOHN F. GERRY PLAZA
4TH AND COOPER STREETS
CAMDEN, NEW JERSEY 08101
November 15, 2012

B E F O R E: THE HONORABLE JOSEPH E. IRENAS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

TRUJILLO, RODRIGUEZ & RICHARDS, LLC
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Counsel for Defendant

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A P P E A R A N C E S C O N T I N U E D :

KATZ & RANZMAN, P.C.
DANIEL M. KATZ, ESQUIRE
Counsel for Defendant

1 THE COURT: I see some familiar faces that should be
2 somewhere else but here. Must be a slow day at Paul Weiss.

3 Okay. This, of course, is the ALPA case, which has
4 been parked on my doorstep now for quite a while, and may I
5 have the appearance of counsel. Let's start with the
6 Plaintiffs and then work around.

7 MS. RODRIGUEZ: Good morning, Your Honor. Lisa
8 Rodriguez and Nicole Acchione from Trujillo, Rodriguez &
9 Richards for the Plaintiffs.

10 MS. ACCHIONE: Good morning, Your Honor.

11 MR. PRESS: Alan Press for the Plaintiffs, Judge.

12 THE COURT: Good morning, Mr. Press.

13 MR. PRESS: Good morning.

14 MR. CONNELL: Archer & Greiner by John C. Connell on
15 behalf of the Defendant, ALPA. I'm here with my associate,
16 Kerri Chewning.

17 MR. WELLS: Good morning, Your Honor. Ted Wells from
18 Paul Weiss.

19 THE COURT: Representing ALPA?

20 MR. WELLS: ALPA, yes, Your Honor.

21 MR. COHEN: Your Honor, Jay Cohen, also from Paul
22 Weiss.

23 THE COURT: J-a-y?

24 MR. COHEN: J-a-y, yes, Cohen.

25 THE COURT: The Cohen I got, but the Jay, J-a-y.

1 MR. TOAL: Good morning, Your Honor. Dan Toal from
2 Paul Weiss.

3 THE COURT: Dan?

4 MR. TOAL: Toal, T-o-a-l.

5 THE COURT: T-o-a-l?

6 MR. TOAL: That's right, sir.

7 THE COURT: And you're from Paul Weiss, okay.

8 MR. KATZ: Good morning, Judge Irenas. Daniel Katz.

9 THE COURT: Oh, a familiar face.

10 MR. KATZ: The law firm of Katz & Ranzman,
11 Washington, D.C., representing the Defendant, ALPA.

12 THE COURT: Okay. The reason this was originally set
13 was to sort of check into the progress. In fact, I think I
14 really anticipated it be done in chambers, not even be done on
15 the record, to just find out when we're getting our expert
16 reports in, what the timing is to respond to the reports, what
17 kind of discovery, and we -- when I say "we," anybody here
18 would undertake in connection to the damages trial, to do
19 those kinds of things.

20 Mr. Wells' appearance was really after -- when I say
21 "Mr. Wells," Paul Weiss and Mr. Wells and the other attorneys
22 from Paul Weiss, came in later, I mean, when this conference
23 was really set up, and he's raised some new issues. So why
24 don't I let -- let's start with Paul Weiss, tell me, you
25 know -- explain their representations and what it is there.

1 Anybody can speak.

2 MR. COHEN: Your Honor, I'm between the two of them,
3 so I'll give it a try. Jay Cohen.

4 THE COURT: I have Jay, J-a-y.

5 MR. COHEN: I'm actually looking at my judge's
6 portrait on the wall. I used to work for Judge Hunter.

7 THE COURT: Yeah, you're not a Marine, are you?

8 MR. COHEN: I am not, sadly.

9 THE COURT: Just checking. November 8th is not a
10 national holiday for you, is it?

11 MR. COHEN: We had last year, I believe -- I don't
12 know if you know who Judge Snow is, but we had his 40th
13 anniversary party of the all clerks.

14 THE COURT: Didn't his wife --

15 MR. COHEN: She just passed away. She was alive --
16 she was alive, yeah.

17 THE COURT: I know it was just recently she passed
18 away.

19 MR. COHEN: Yeah, she was too ill to attend the
20 party. We realized we had been deprived of all these
21 reunions, so we went to Tavistock, and this morning I went to
22 Shirley's for the first time since 1981 for coffee.

23 THE COURT: Were you in this building?

24 MR. COHEN: Yes, the 4th floor.

25 THE COURT: The 4th floor, yeah.

1 MR. COHEN: Judge Cohen was across the hall.

2 THE COURT: Well, I appeared as a practicing lawyer
3 here when he was on the 4th floor. In fact, I appeared -- in
4 the chambers that I now sit, I appeared before Mitch Cohen,
5 actually. He was sitting in sort of a butchered version. The
6 chambers that I now sit in have been redone to look the way
7 they looked in the 1930s. But when he was there, the room was
8 subdivided and the ceiling was lower, but I appeared before
9 Judge Cohen.

10 MR. COHEN: It's a much nicer -- Ms. Rodriguez and I
11 talked about this. It's a much nicer court than it used to
12 be, but I think the new building was the parking lot.

13 THE COURT: Yeah, well, I was in the new building for
14 a while, but when they redid this courtroom, when they fixed
15 it up and they fixed up the chambers that I'm in, the adjacent
16 chambers, I was then the senior acting judge, so I moved back
17 here. I remain the only judge in this building.

18 MR. COHEN: Right.

19 THE COURT: Bankruptcy, magistrates, district are all
20 in -- are all in the court house. I'm the only one that's
21 here.

22 MR. COHEN: Your Honor, if we may, as we -- and,
23 obviously, we've been working closely with Archer & Greiner
24 and Mr. Katz to move this along. As we understand, what was
25 supposed to have been accomplished in the conference was, one,

1 we can report on discovery. There was discovery ordered with
2 respect to --

3 THE COURT: There was five -- we were going to take
4 the deposition of five of the pilots, I believe.

5 MR. COHEN: Well, five individuals. Not all pilots.
6 They were American executives --

7 THE COURT: I just remember five individuals that
8 were supposed to be deposed.

9 MR. COHEN: Yes, and four of the five have been
10 completed, Your Honor.

11 THE COURT: Who hasn't been completed?

12 MR. TOAL: There were four total.

13 MR. COHEN: Four total. We have one left on the
14 29th. John Dare.

15 MR. PRESS: The five class members have all been
16 deposed, Judge.

17 MR. TOAL: Mr. Cohen's referring to the third-party
18 witnesses.

19 MR. COHEN: Oh, from the union.

20 MR. TOAL: Yeah, American and the union.

21 MR. COHEN: So that discovery will be completed this
22 month.

23 We are in receipt of preliminary expert reports of the
24 Plaintiffs, and I think we were just discussing this before,
25 and in our view we would like to see final expert reports. We

1 are going to need some discovery in connection with the
2 experts, fairly targeted discovery.

3 THE COURT: Before we go back, we have expert reports
4 now from the Plaintiff.

5 MR. COHEN: Well, we have preliminary expert reports
6 for the Plaintiffs that set out a methodology for how they
7 would do a list but do not have any of the individualized
8 setoffs and data that should get us to a damage number. So we
9 have a number of expert reports with a range of damages, 160
10 million or so on the low side and --

11 THE COURT: On the low side?

12 MR. COHEN: On the low side. And 1.7 billion on the
13 high side. So we have a wide range of numbers which the
14 Plaintiffs --

15 THE COURT: Get my press agent -- get my press agent
16 to send out a notice that I'm handling a \$1.6 billion case to
17 *The Wall Street Journal* or something.

18 MR. COHEN: So we have a range of numbers, but from
19 our view -- and we don't have the final expert reports. We
20 have these preliminary reports with the methodology.

21 You know, but the way we think it makes sense to go
22 forward is, even these preliminary expert reports raise some
23 discovery issues. Let me tell you what those are. One
24 relates to the condition of TWA. So the experts --

25 THE COURT: I'm sorry?

1 MR. COHEN: Of the TWA Airline's financial condition
2 prior to the merger. Let me explain why, if I may.

3 THE COURT: And you're talking ten -- how many, ten,
4 12 years ago?

5 MR. COHEN: Yeah, 2000, Your Honor.

6 THE COURT: About 12 years ago.

7 MR. COHEN: So what their experts do -- and I don't
8 want to put words in Mr. Press or Ms. Rodriguez's mouth, they
9 can further explain this -- but what they do is they made a
10 series of assumptions in their "but for" world of what the
11 list would have looked liked, what the WPC would have looked
12 like if ALPA had done a variety of things. And one of the
13 things that they do, obviously, is talk about bargaining
14 leverage between TWA on one side and American on the other,
15 that's really quite fundamental to their report -- to their
16 reports, and they make some assertions about the TWA's ability
17 to have leverage, which we think are completely consistent --
18 inconsistent rather, with the financial record -- it's an
19 important distinction. Let me say that again. Completely
20 inconsistent --

21 THE COURT: Very good.

22 MR. COHEN: -- with the financial condition of TWA.

23 What we know in 2000 from the Bankruptcy Court and TWA
24 is the judge viewed the only alternative to American's
25 acquisition of the assets was a liquidation. Whether or not

1 TWA would have been able to fly had the American transaction
2 not gone forward is a critical issue with respect to what were
3 the expectations --

4 THE COURT: There was also pending -- wasn't there a
5 motion to reject the TWA labor contract, what is it, 1113
6 or --

7 MR. COHEN: Yes, I think so, Your Honor.

8 THE COURT: I always forget that special provision of
9 the labor contracts, but there was pending that at the time.

10 MR. COHEN: Yes.

11 THE COURT: -- never got decided because of the way
12 the case worked out, but there was a pending motion to reject
13 the -- the TWA labor contract.

14 MR. COHEN: I believe you're correct, Your Honor.

15 So, fundamentally, we think -- you know, the experts
16 have constructed what the economists call a "but for" world
17 and then say, This is how we view what the leverage would have
18 been of the TWA pilots vis-a-vis American. And they go back
19 and they look at the history of prior mergers or combinations,
20 they look at lots of arbitration results, which we don't think
21 has any relevance because there was no ability to arbitrate
22 here, and we think that's what the factual witnesses will say,
23 that's what they said at their depositions, and
24 they -- and they distinguished kind of the low end, in their
25 view, of what a list would have looked like, from the high end

1 by distinguishing what the condition was at TWA. So they
2 distinguish TWA on the one hand from the airlines they say
3 that were essentially out of business. So that's a
4 fundamental factual predicate: We think TWA was out of
5 business.

6 I think we need to take three or four, perhaps five,
7 depositions of TWA executives. We can find them, get the
8 financial records --

9 THE COURT: To the extent you can find them.

10 MR. COHEN: Well, we found the American executives.
11 I mean, they're all retired, but we found them. So that to us
12 is important.

13 The second thing that we don't have, of course, is we
14 don't have any information about the absent class members, the
15 individual members of the class, which, obviously, is relevant
16 to the computation of damages.

17 So all that we have received from the Plaintiffs are
18 these preliminary reports with this gigantic range of numbers
19 and with eight different damage models, I think, in the
20 aggregate, and they say, Here's what it is and we'll tell you
21 later, once we've collected the information, what the setoffs
22 are. And so, from our perspective, we don't know what their
23 theory is and what their numbers are. So what we would
24 propose to do to go forward is, one, take the TWA discovery
25 while they're working on their final reports, because they

1 don't have final reports; two, we need the information from
2 the class members so we can determine what the setoffs -- and
3 we have a dispute, obviously, about mitigation. Your Honor
4 knows there is a motion.

5 THE COURT: Is it your theory that you're going to go
6 pilot by pilot as to what the mitigation is?

7 MR. COHEN: Yes, consistent with, Your Honor, we have
8 to all figure out a reasonable way to do that.

9 THE COURT: I mean, take Pilot 1, when you worked
10 this job, you flew for this airline and you --

11 MR. COHEN: Well --

12 THE COURT: And the same thing with Pilot No. 2,
13 okay, you worked here, you were called -- in other words, take
14 the actual facts of mitigation damages one by one by one.

15 MR. COHEN: Well, let me start with setoffs, Your
16 Honor, and then, if I may, go to mitigation. We think --

17 THE COURT: I put that in one category, setoffs and
18 mitigation. My point is, it's your position it's going to be
19 done pilot by pilot and not on some aggregated basis.

20 MR. COHEN: We don't think --

21 THE COURT: Partially aggregated basis.

22 MR. COHEN: We don't think under the Wal-Mart
23 decision the Plaintiffs can go forward that way. We think we
24 are entitled to, first off, actual earnings, which is not part
25 of their expert reports, they make all sorts of assumptions;

1 actual earnings at American, which their experts don't
2 consider; actual setoffs; actual mitigation. Yes, we think
3 we're entitled to that data, and we would like to do it in a
4 reasonable way.

5 We are, obviously, not going to take 2,700 depositions,
6 or even a substantial fraction of that, but we need the data.
7 We think we can get it --

8 THE COURT: For how many pilots do you think you can
9 get?

10 MR. COHEN: Is there 2,700 in the class? Oh, it's
11 2,300.

12 THE COURT: You think you can get detailed
13 information from 2,300 pilots in this case and send it to a
14 jury?

15 MR. COHEN: I think what we are saying, Your Honor,
16 is in the first instance the Plaintiffs need to give us that
17 information for their class members. Obviously, it's been
18 done on other cases by interrogatory.

19 THE COURT: I'm sorry?

20 MR. COHEN: It's been done in other cases by
21 interrogatory. We have served interrogatories on --

22 THE COURT: In a jury case?

23 MR. COHEN: I don't think there is any distinction of
24 a jury trial, Your Honor --

25 THE COURT: I don't want to represent -- I'm not

1 representing there is any legal distinction between jury and
2 nonjury, but do you have a case, a case where there was a jury
3 and we're submitting 2,300 --

4 MR. COHEN: So maybe I'm not being clear, Your Honor.
5 I understand your point. We're not saying we are going to
6 submit item by item by item. What we are saying is the
7 experts' calculations to aggregate all this information have
8 to be based on the actual information with respect to class
9 members.

10 THE COURT: I remember in 1968 I was bored and I
11 enrolled in a graduate program at NYU and it was in trade
12 regulation, and one of the courses we took happened to be
13 Robinson-Patman, now basically a dead letter, but at the time
14 it was a much hotter issue than it is today. You don't hear
15 much about Robinson-Patman today. I still think it's on the
16 books, but you don't hear much about it. I heard of cases
17 that had to do with what was called the wrongdoing rule. The
18 wrongdoing rule is when the wrongful conduct of the Defendant
19 created the difficulty for the Plaintiff in measuring damages.
20 You wound up with -- you could use a method of calculating
21 damages that might not in pure theory be the best or most
22 accurate. And I gather they have not come up with such a
23 theory.

24 I mean, let me give you an example. Take mitigation.
25 I could pick 20 people at random from a computer program of

1 the 2,300 pilots. You know, figure mitigation, you know,
2 detail, come up with some kind of average, and then use it
3 across the board, just to give you one very primitive way of,
4 you know, looking at it. You following me?

5 MR. COHEN: Oh, I understand.

6 THE COURT: In other words, so I wouldn't be
7 presenting to a fact-finder, whether it was a jury or a judge,
8 trying to deal with 2,300, you know, different -- okay. Go
9 ahead.

10 MR. COHEN: So, Your Honor, I mean, obviously, we're
11 not going to call all of these people, but here's what we
12 think, and I don't even think the Plaintiffs disagree. What
13 the Plaintiffs have not done in their expert reports is --
14 they are, as I understand it, collecting exactly the
15 information that I'm talking about that we need from their
16 class members. I think we probably have a disagreement about
17 the scope of what they're collecting, but I think even the
18 Plaintiffs recognize that actually --

19 THE COURT: Do you know what they're collecting?

20 MR. COHEN: I think we'd have to look to Mr. Press to
21 address it. I think I know what they're collecting, but we
22 had a motion that was withdrawn, so I think there --

23 MS. RODRIGUEZ: Well, we had asked for your input and
24 you refused us, so --

25 THE COURT: I mean, one of the things you could do, I

1 guess, is come up with an agreed-upon form, you know, in which
2 both sides agree that this is the information you're going to
3 collect from the pilots and develop some method for going out
4 and getting it.

5 MS. RODRIGUEZ: And, Your Honor, we had actually
6 proposed that in September, and that was the genesis behind
7 our motion for Court-approved notice, but Defendants at that
8 time chose not to participate in the information -- in adding
9 to the information that we were seeking from the class, but --

10 THE COURT: You don't -- I don't have a motion
11 pending on that.

12 MS. RODRIGUEZ: We filed a motion. Defendants
13 opposed -- we filed a motion seeking Court approval because we
14 wanted a notice that incorporated everyone's request for
15 information from the class. We didn't want to be in a
16 position --

17 THE COURT: Is that pending?

18 MS. RODRIGUEZ: The Defendants opposed it and you had
19 suggested before it wasn't appropriate for the Court to give a
20 stamp of approval over the Defendants' objection, if they
21 weren't willing to --

22 THE COURT: That's how I feel now.

23 MS. RODRIGUEZ: If they weren't willing to
24 participate, it really didn't make sense.

25 THE COURT: It's not pending?

1 MS. RODRIGUEZ: It's not pending. It was something
2 that we had contemplated.

3 MR. COHEN: Your Honor, what we're saying is to
4 actually -- huge amounts of money swing on these mitigation
5 and setoff issues. I think we know that.

6 THE COURT: Apparently, it's a huge amount.

7 MR. COHEN: And one of the things we know from the
8 Plaintiffs' preliminary reports is there are hundreds of class
9 members who are no worse off if they would have been under
10 Schedule CC, so even under the Plaintiffs' preliminary theory
11 there are class members who are not damaged. They're a very
12 small number --

13 THE COURT: We knew that. I don't think there is any
14 surprise that there is a small -- some number of class members
15 who, as it turns out, were not damaged.

16 MR. COHEN: So I think, Your Honor, our view is that
17 since the decision of Wal-Mart by the Supreme Court, which
18 rejected this trial by formula, we are entitled to the
19 information, actual information. We are not suggesting huge
20 numbers of people testify. There will have to be some
21 testimony from individuals. And the experts will compute it.

22 So what we would like to see is go forward with that
23 discovery; give us the information when they give it to their
24 experts. We want them to give us their final expert reports,
25 preferably telling us what their damage number is instead of a

1 range that's over a billion and a half dollars, which I don't
2 think is a particularly easy thing to respond to. I
3 understand they may have fallback theories, but there should
4 be a theory of damages, I think, that's their primary theory.
5 And then we'll respond promptly. If they can tell us when
6 they will submit their final reports, and we'll do the
7 discovery in the interim, and give us the information --

8 THE COURT: When you say, "we'll do the discovery,"
9 be more specific.

10 MR. COHEN: The TWA discovery.

11 THE COURT: Tell me what you mean by that.

12 MR. COHEN: Your Honor, what we would like is a
13 number of depositions of former TWA executives. Would you
14 like the names, Your Honor?

15 THE COURT: Well, not right now. I'm trying to get a
16 notion of the scope.

17 You are not talking about discovery of pilots.

18 MR. COHEN: No, no.

19 THE COURT: You're talking about the discovery of
20 executives. Well, the executives may be pilots, but --

21 MR. COHEN: So what we have in mind, Your Honor, is
22 the CEO who gave testimony at the bankruptcy hearing; the CFO;
23 the investment banker at Rothschild, a firm in New York that
24 was retained to evaluate.

25 THE COURT: What's that person's name?

1 MR. COHEN: David Resnick, R-e-s-n-i-c-k. The former
2 CEO, if Your Honor would like the name, is William --

3 THE COURT: No.

4 MR. COHEN: Sorry.

5 THE COURT: Okay. Go ahead.

6 MR. COHEN: So Terry Hayes, who is the VP of labor
7 relations. And we've identified one or two pilots who we
8 think would have relevant information: a Captain Schwartz,
9 who is the vice chair of the MEC, and a gentleman named John
10 Hefley, H-e-f-l-e-y, who is now working at Cathay Pacific. He
11 used to be a plaintiff in this case.

12 So we would propose to take those --

13 THE COURT: Excuse me. You said "used to be a
14 plaintiff," meaning what?

15 MR. COHEN: He was supposed to be a plaintiff. He
16 was a class rep and no longer is, as I understand it, Your
17 Honor.

18 THE COURT: Okay.

19 MR. COHEN: The discovery that Your Honor had
20 already --

21 THE COURT: He's still a plaintiff, though. He's
22 just not a --

23 MR. COHEN: He's a member of the class, of course,
24 Your Honor, yes.

25 So the discovery that we had previously talked about

1 completing that Your Honor referenced at the beginning will be
2 done at the end of November.

3 THE COURT: Okay. Tell me what you're trying --
4 what's the thrust -- what kind of proof are you trying to
5 develop with this group of --

6 MR. COHEN: The proof that we're trying to develop,
7 Your Honor, is that to the extent the Plaintiffs' damage
8 theory is predicated on the assumption that TWA had
9 alternatives to the American sale, that's what their experts
10 say, that they are different than an airline that was going to
11 simply cease flying, and, therefore, under the Plaintiffs'
12 theory had some leverage, right. The Plaintiffs' theory is,
13 if you had done your job and exercised your leverage, you
14 would have gotten a much better list.

15 THE COURT: Well, the staple point would have been
16 different, if you get right down to it. The staple point
17 would have been different.

18 MR. COHEN: Yes. Staple and --

19 THE COURT: And how many people stapled to the end of
20 the list. The smaller that group is, well, obviously, the
21 smaller the damages. The bigger that group is, the bigger the
22 damages.

23 MR. COHEN: So what we would like to show, Your
24 Honor, is what we think we can prove, because it's what the
25 Bankruptcy Court found -- but we can't use that as evidence --

1 the Bankruptcy Court found that, in fact, TWA was out of
2 alternatives and that had it not taken the American deal it
3 would have liquidated. We would like to develop --

4 THE COURT: Where do you get that?

5 MR. COHEN: From the finding of the Bankruptcy Court
6 approving the American assets. I think was a 363
7 confirmation.

8 THE COURT: Is there a specific finding that they
9 would have had to liquidate?

10 MR. COHEN: Yes, Your Honor, there was.

11 THE COURT: To approve the American merger, you
12 didn't have to find that. You could have found that the
13 American deal was a fair and adequate deal. You don't have to
14 find -- it's not a matter of bankruptcy law. It's not a
15 requisite that you find there would have been a liquidation
16 but for that merger.

17 MR. COHEN: Your Honor is absolutely right, but, in
18 fact, there was a specific finding by the Bankruptcy Court in
19 connection with the challenge to the acquisition saying that
20 it was -- in connection with the fairness, it was fair
21 because, in fact, there is no other alternative for TWA.

22 So I actually have the transcript here, but I can't lay
23 my hands on it at the moment.

24 MR. KATZ: Do you want me to comment?

25 MR. COHEN: Just give me the case.

1 MR. KATZ: There was a hearing March 12th, 2001
2 before the Bankruptcy Court, Your Honor, and at that hearing
3 the bankruptcy judge approved the American acquisition, there
4 was an auction, and the only qualified bidder was American.

5 THE COURT: Right.

6 MR. KATZ: And he approved it. And the reasons he
7 gave from the bench on March 12th at the conclusion of the
8 hearing were that, absent the American transaction, it was a
9 virtual certainty that TWA would liquidate were it not for the
10 American acquisition. The bankruptcy judge then codified and
11 issued a formal opinion on April 2, 2001 in which he gave a
12 detailed analysis of all the financial parameters and came to
13 the same conclusion.

14 THE COURT: Okay.

15 MR. COHEN: Your Honor, the precise language which my
16 colleague was good enough to hand to me is: If TWA does not
17 proceed with the transaction with American, there isn't going
18 to be a strategic transaction with anyone else, and the
19 inevitable result would be a liquidation of the debtor. Which
20 is fundamentally at odds with the Plaintiffs' experts, because
21 the Plaintiffs' experts, how they get in this range and how
22 they --

23 THE COURT: You mean the new round of experts.

24 MR. COHEN: Yes, Your Honor.

25 THE COURT: You're not talking about the experts that

1 they hired at the time this was all going on.

2 MR. COHEN: No, Plaintiffs' damage experts for the
3 damages trial in this case.

4 So what we would propose, Your Honor, is not to take
5 2,300 depositions and not to do massive class-wide discovery,
6 you know, while they are collecting the data from their
7 clients and, you know, we will proceed with this TWA
8 discovery.

9 THE COURT: Are you leading to a motion of some
10 kind -- I mean, is the idea here you do the discovery and make
11 a motion to either dismiss the damage or reduce it? Is that
12 the end game here?

13 MR. COHEN: Well, Your Honor, I think there are
14 three -- two or three possible end games. And one certainly
15 principal end game is to make sure that we have an opportunity
16 to effectively cross-examine their experts at trial, if they
17 get to trial -- I'll come back to motions -- and show that
18 their factual predicates for their reports are false.

19 THE COURT: It may be that it's even correct that the
20 American deal had not been done that there was no other really
21 viable alternative for TWA. That may be true. But it doesn't
22 follow from that that had the union taken a stronger
23 bargaining position they could not have gotten a better deal,
24 which those two --

25 MR. COHEN: Yes, I understand, Your Honor.

1 THE COURT: The fact is at the end of the day there
2 was really no viable alternative. In other words, TWA
3 couldn't continue on as a standalone airline. It doesn't
4 follow -- it's not an automatic result from that if the union
5 had taken an aggressive position that they still might not
6 have gotten a better deal from American. And I don't
7 think the experts -- when I use "the experts," I'm talking
8 about the people the union hired back -- you know, back when
9 all this was going on -- I don't think they were arguing that
10 they could be a standalone airline. A couple did, but most of
11 them did not. The argument was that, you know, that
12 they -- had they taken a stronger position they could have
13 gotten a better deal and that TWA was a nice acquisition for
14 American and that American really wanted to see it blow up.

15 MR. COHEN: I understand, Your Honor, and I'm not
16 making a point --

17 THE COURT: You understand what I'm saying?

18 MR. COHEN: Absolutely. I'm not making that point.
19 What I'm saying is -- so now we're at the damages phase and
20 the Plaintiffs' experts say, Well, I have to quantify what
21 would have happened, right, if they had more leverage. And
22 the way that they attempt to quantify that is -- actually, I
23 don't know how this testimony will actually ultimately survive
24 a Daubert motion, but what their principal expert says is, I
25 can quantify the bargaining leverage, and one of the essential

1 factual predicates --

2 THE COURT: Quantify it in what sense?

3 MR. COHEN: What he says, Your Honor, he looks at the
4 various things that -- and, you know, the Plaintiff will have
5 to explain this -- he looks at the various things that he says
6 that TWA -- that the TWA pilots could have done and that ALPA
7 could have done, all the things that were dealt with in the
8 liability trial.

9 THE COURT: Threat of litigation.

10 MR. COHEN: Threat of litigation, the jump seat war.
11 And he says there's a 2 percent probability that could have
12 occurred; there is a 6 percent probability that could have
13 helped -- exactly what he says, Your Honor -- there is
14 8 percent probability. He adds all of those things up under a
15 theory that we think will not survive a Daubert motion,
16 ultimately, but we'll see what he has to say, you know, down
17 the road. He adds all those things up and he adjusts his
18 damages figures by probabilities.

19 The other thing that he does, Your Honor, is he's
20 looking at a range of arbitration awards. After all, the
21 fundamental question is what was the reasonable expectation of
22 the pilots, right, had there not been the alleged breach of
23 the duty of fair representation. So he looks at all these
24 arbitration results, some of them, not surprisingly, are not
25 that good for the pilots who are in the acquired airline, some

1 are better. The way that he attempts to distinguish the ones
2 at the low end of the range is to say, Oh, well, those
3 airlines, they were on the verge -- they either were
4 furloughing pilots or they were not really going to fly
5 anymore.

6 And we think, Your Honor, the reason we want to take
7 this discovery and why we think it is relevant, we think we
8 can say, Look, Plaintiffs' expert, you will concede that if
9 you believed, right, and if you assumed that -- that TWA had
10 no options and it was on the verge of bankruptcy and
11 it --

12 THE COURT: Was in bankruptcy.

13 MR. COHEN: -- was on the verge of liquidating, you
14 would have to concede that you would move down this scale of
15 bargaining leverage and where the likely list would be down to
16 the very low end. Where they are is at the very high end.

17 THE COURT: But the issue comes down to where is the
18 staple point.

19 MR. COHEN: Well, it's one of the issues, as I
20 understand their expert, because they also moved people around
21 all through the middle of the list, and that has a lot of
22 dollar implications, actually, Your Honor. It's not just the
23 staple point. It's really essentially every point in the list
24 they're making assumptions based on probabilities. So they're
25 not just saying, well, the staple point, instead of No. 10,

1 it's at No. 50 or No. 2. It's throughout the list.

2 So that discovery, Your Honor, we really need. I mean,
3 I don't think, ultimately, Plaintiffs' experts can testify
4 based on factual predicates that are completely inconsistent
5 with the record, so we want to take that discovery. It will
6 be targeted. It will be these small number of depositions.
7 We're prepared to proceed with them. You know, with Christmas
8 coming up, we'll finish them, say, by mid-January. You know,
9 we don't need a lot of time to take them. We'll get some
10 documents from them.

11 And in the meantime, they can be proceeding with
12 collecting that information. And what they really should give
13 us is the final expert reports that actually don't have just a
14 menu, the damages are 165 million -- or if they want to -- 165
15 to 1.7 billion, but I think we're at least entitled to know
16 what is their damage theory that they intend to present at
17 trial so we can present experts in opposition to their damage
18 theory.

19 So that's what we're seeking, Your Honor. I mean, we
20 can do that discovery. We do need the information from the
21 Plaintiffs. We do have a disagreement as to mitigation, as
22 Your Honor is aware of, but they, I believe, are collecting
23 the setoff data. They don't have to tell us what they're
24 doing.

25 And I'd be happy to address whether we wanted to

1 participate, if I could clear that up. We didn't think it was
2 for the Court to be involved in soliciting data.

3 THE COURT: Well, I didn't either.

4 MR. COHEN: Yes, I'm aware of that, Your Honor. And
5 if they want us to agree on a joint set of interrogatories to
6 the class members, we'll do that. We'd be happy to do that.
7 It's not that we didn't want to participate at all. It's
8 that, as Your Honor thought, we didn't think it was the
9 Court's job at this point to go to the class members.

10 So we're prepared to sit down with them, work out a set
11 of interrogatories. We obviously think it should include not
12 just setoffs but mitigation. We can go collect that
13 information. Whenever they tell us that their final expert
14 reports are ready, we'll -- you know, we'll take depositions
15 within a few weeks of when their final expert reports are
16 ready.

17 THE COURT: The deposition of their expert?

18 MR. COHEN: Yeah, once they actually give us their
19 actual report with actual numbers. And we can certainly -- if
20 they gave us expert reports --

21 THE COURT: One expert? Two experts?

22 MR. COHEN: Well, it's two or three, Your Honor.

23 MS. RODRIGUEZ: Two.

24 MR. COHEN: Two, okay.

25 THE COURT: Two different reports.

1 MS. RODRIGUEZ: Yes.

2 MR. COHEN: Two different reports. They actually
3 have three sets of numbers, but it's two experts. And they're
4 not consistent with each other. They don't use the same
5 methodology and they don't get to the same numbers, so we
6 don't feel we're in a place to be responding.

7 THE COURT: So we don't have a foolish consistency,
8 the hobbit and the small mind?

9 MR. COHEN: Yeah, I have a small mind, Your Honor. I
10 apologize.

11 So we will move this discovery forward. You know,
12 we'll have completed that other discovery on the 29th. We
13 just told the Plaintiff about the date today. If they can
14 make that last deposition on the 29th, we'll be done with all
15 the pre-existing depositions. We will go subpoena these TWA
16 people. I am sure we can finish it by the end of January. We
17 probably would do better if it wasn't Thanksgiving and
18 Christmas, but by the end of January. I don't know how much
19 time it will take for the data collection from the class
20 members and then for their experts to actually give us their
21 numbers. And, you know, once we get that, we'll be happy to
22 talk about --

23 THE COURT: My guess is that's a formidable task.

24 MR. COHEN: Your Honor, I understand that, and I
25 don't mean --

1 THE COURT: A large number, you know, of events that
2 took place many, many years ago where, you know, people may or
3 may not have records, you know, to back up, you know, whatever
4 numbers they suggest. But all right.

5 MR. COHEN: And, Your Honor, I don't mean to minimize
6 that, but I do think under the Wal-Mart case, which I think is
7 the law now, you know, trial by formula doesn't work. And as
8 I said, I don't think there is a disagreement. The Plaintiffs
9 are intending to collect that data. You know, if they fall
10 short, what the implications will be for people who don't
11 submit data, I don't think we have to reach that today.

12 But that's our basic proposal: Discovery of the TWA
13 financial condition between now and the middle of January;
14 collect the data. As I said, if they want to sit down and do
15 joint interrogatories, we'll sit down with them this week,
16 beginning of next week, and try to agree upon them so it's
17 coming from both parties so we don't disagree what we are
18 asking for. And once they tell us when they will give us
19 final expert reports, we'll depose those folks within a month,
20 and we'll find out when we can put in our responsive reports.

21 THE COURT: Mr. Press?

22 MR. PRESS: Thank you, Judge. The only thing I heard
23 Mr. Cohen ask for was permission to take some depositions,
24 which we really don't have an objection to.

25 THE COURT: You mean the one of the CEO, CFO, so

1 forth?

2 MR. PRESS: Right. I'm not saying it'S going to be
3 relevant and admissible, but it's certainly likely or could
4 lead to admissible evidence. So if they want to go take
5 depositions, they can go take them. We don't have a problem
6 with that, Judge.

7 But I do have a problem with characterizing our
8 experts' reports as preliminary. The only thing we lack from
9 a final damage number were the actual earnings from the class
10 members, which we are collecting, Judge. We have prepared a
11 Request for Information to all of the class members, and we
12 tailored it from the themes that came out in the depositions
13 they took of our clients and we've asked for that information.
14 It's actually at a printer right now being printed and --

15 THE COURT: What's at the printer?

16 MR. PRESS: Our Request for Information to the class
17 members.

18 THE COURT: Oh, the class.

19 MR. PRESS: I'm sorry, Judge. And we expect that to
20 hit the street and go out to 2,000 people very shortly. But
21 what the -- what the union does have is our experts' view of
22 what the "but for" seniority list should have looked like and
23 every individual pilot's "but for" earning from that "but for"
24 seniority list. So, really, ALPA has everything it needs to
25 take a meaningful deposition of our experts right now.

1 THE COURT: Except the offsets.

2 MR. PRESS: That's all they're missing, but that's
3 really -- that's really not opinion evidence, that's just
4 math, Judge. They've had these reports for more than four
5 weeks. They've never even asked for dates to take our
6 experts' depositions. They're available now, and we think
7 that these depositions should be taken. When the offsetting
8 data is collected, it's a simple matter of math. Harold
9 Hollander, or take whatever pilot, we already have a number
10 for that pilot, what his "but for" earnings would have been.
11 We have that and they have it.

12 THE COURT: Without regard to any kind of offsets.

13 MR. PRESS: Right. And then once we collect that
14 person's information, it's just a matter of subtraction,
15 Judge.

16 They can take a meaningful deposition right now and
17 they don't want to. They want to delay things. We want, of
18 course, to go to trial. It was June 5, 2010 when we started
19 the liability case, Judge, and I suggest we start the damage
20 case two years after that in June, in 2012. Our --

21 MS. RODRIGUEZ: 2013.

22 MR. PRESS: Oh, you're right. 2013, Judge. I'm
23 missing a year.

24 But we have no objection --

25 THE COURT: What's a year among friends?

1 MR. PRESS: Exactly. After six years of this thing.
2 We have no objection to the TWA discovery they seek,
3 but we do have an interest in seeing them pushing forward on
4 the expert discovery, Judge.

5 THE COURT: Anything else?

6 MR. PRESS: No, not really.

7 MR. COHEN: Your Honor, let me just correct it.
8 We're not seeking to delay. I mean, the Plaintiffs --

9 THE COURT: If I understand what Mr. Press just said,
10 he said, look, you want to take these five or six people or
11 seven people; he says he doesn't object to that. If you can
12 find them and subpoena them, he has no objection.

13 MR. COHEN: Your Honor, and I appreciate that.

14 THE COURT: He's saying a different thing. He's
15 saying he's given you a report that shows a "but for," you
16 know -- where would have been had the union done what, in his
17 view, they should have done or the expert's view they should
18 have done.

19 MR. PRESS: True.

20 THE COURT: And what the earnings would have been had
21 that been done.

22 MR. PRESS: True. They have that.

23 THE COURT: He's saying all that's missing is the
24 offsets to that. In other words, if a pilot would have made
25 \$200,000, you know, to get the actual damage number we have to

1 know what he or she earned in that interim period. So if it
2 was \$50,000, then the damage would be \$150,000 for that pilot.

3 Is that what you're saying?

4 MR. PRESS: That's exactly what we're saying.

5 MR. COHEN: It's not just math, Your Honor. The
6 mitigation piece of this, as opposed to what they actually
7 earned, but what they should have done. So we know from their
8 expert reports, because they conceded it, that where you are
9 on a list is not necessarily predictive of how much money you
10 make. Because you could be No. 1 on the list, and if you
11 decide to take a leave of absence, if you decide that you
12 don't like flying jumbo jets anymore, if you decide you don't
13 want to fly on weekends, you're going to earn a considerably
14 different amount of money, and their expert reports
15 acknowledge that. So the mitigation piece of this, Your
16 Honor, is directly relevant to what the opinion is with
17 respect to damages.

18 Now, you know, if they want us to take depositions
19 twice -- we can schedule depositions of their experts, you
20 know, say in December or early next year. Our thinking, Your
21 Honor, was that it would be more efficient to depose them once
22 when we have a final report. We didn't think that we should
23 put their experts to the trouble of two sets of depositions.
24 I don't think it's just them. It's just that their experts
25 wouldn't be getting the data. They wouldn't be subject of

1 expert testimony.

2 THE COURT: The position of Mr. Press is that all I'm
3 getting is mathematical numbers, and I guess you're
4 challenging that assumption. You're saying that mitigation is
5 more than just what they, in fact, earned other than by
6 flying, but would involve personal decision-making, you know,
7 as to what they're going to do with their lives at this point
8 forward.

9 MR. COHEN: Right. I'm not just saying that. Their
10 experts are saying that. Their experts concede that your
11 place on the seniority list is not the only necessary input to
12 understanding what you would have earned. And it's not just
13 offsets, it's offsets and the choices you make that affect you
14 where you are. So if we had put everybody at the top of the
15 list, we, you know -- we still would have differing earnings
16 from their models. So it goes to the fundamental assumptions
17 in their model about how they're going to deal with mitigating
18 circumstances.

19 THE COURT: What information are you gathering from
20 your 2,000 models?

21 MR. PRESS: Primarily, it's coming from the
22 furloughees, Judge. When were you furloughed? How much money
23 did you earn when you were on furlough? When were you
24 recalled back to American Airlines, if ever? Did you accept
25 the recall or not? And if you were furloughed, did you make

1 any applications to commercial airlines while you were not
2 flying for American? Those are the primary categories of data
3 that we are collecting, Judge, and documents to support the
4 earnings information they provide us, including W-2s and tax
5 returns, not the full returns, but the first two pages of tax
6 returns.

7 THE COURT: When do you think that information is
8 going to be forthcoming?

9 MR. PRESS: It's going to start coming in in
10 December. We gave them a date to respond. January 31st was
11 the drop-dead date for that.

12 MS. ACCHIONE: January 31st.

13 MR. PRESS: Yes, Ms. Rodriguez makes a wonderful
14 point. One of our experts doesn't do any math. We have two
15 experts that have created "but for" seniority lists, but one
16 of them takes Professor Farber's seniority list and computes
17 individual damages from it. So Professor Farber isn't
18 involved in any of this mathematical issue at all, it's only
19 the other expert, whose name is Rikk Salamat. He's taken each
20 "but for" list and created the -- done the damages
21 calculation, Judge. So there is no impediment at all for them
22 deposing Dr. Farber. And, really, they could take a very
23 meaningful deposition of Mr. Salamat right now today. And,
24 obviously, Mr. Cohen has expressed a great understanding of
25 our experts' -- the basis for their opinions. So it sounds to

1 me like they're ready to take a deposition today.

2 So we would, again, encourage you, Judge, let's get
3 these depositions set of the experts. They can take the TWA
4 depositions. Let's get a date for them to disclose experts
5 and a trial date.

6 THE COURT: I can't decide now, but let's assume I
7 would determine after the information came in from your pilots
8 by January that a further deposition is required of one or
9 both of the experts.

10 MR. PRESS: Judge, if they showed a compelling need
11 for a deposition, I'm sure you would order it.

12 THE COURT: Well, that's my point, I would.

13 MR. PRESS: I know.

14 THE COURT: And I can't say now. I don't have -- a
15 lot of this is still kind of theoretical to me. It's hard for
16 me to say. But, certainly, if I thought the information
17 generated by the pilots was used in a way by the experts that
18 required further exploration, I would order it. The fact that
19 they were once previously deposed would not block me from
20 making them be deposed again. You understand that?

21 MR. PRESS: Of course, Judge.

22 THE COURT: Okay.

23 MR. PRESS: Ninety-five percent of the fight on this
24 damages phase is the "but for" seniority list, which they
25 have. And so let's begin --

1 THE COURT: I wouldn't put a percentage on it. It's
2 an issue and the mitigation is another issue. The mitigation
3 issue, I gather, could have a very significant dollar -- I'll
4 call it mitigation/offset issue.

5 MR. PRESS: The setoff will be substantial, material.
6 Failure to mitigate, I mean, that's going to be a very
7 deminimus issue.

8 THE COURT: Put those two together.

9 MR. PRESS: There weren't any pilot jobs available
10 back in the time period we're talking about.

11 Judge, again, the heart of what the next jury's going
12 to decide is the "but for" list, and they can address these
13 issues right now, and we're asking that you order them to.

14 THE COURT: Why not take those depositions?

15 MR. COHEN: Your Honor, as long as we're going to get
16 a second opportunity to depose them --

17 THE COURT: I can't say now whether the new
18 information would justify a second, but if I think it does,
19 the fact that there was a prior deposition is not going to
20 block my ordering another deposition.

21 MR. COHEN: I understand that, Your Honor. But one
22 other thing I want to make sure, we don't have their final
23 reports.

24 THE COURT: Well, that -- that's terminology. I
25 mean, his position is it is final, it's a final report.

1 MR. COHEN: Your Honor, then not only will have we to
2 take them twice, but I don't want to find that we've taken
3 their depositions and in the guise of doing math they're going
4 to have a new methodology. If what they're representing is
5 that this is their methodology, they're not going to change
6 it, the rest is math, you know, I -- frankly, these are
7 incredibly complicated reports. So while I appreciate
8 Mr. Press's compliment, we are not fully conversant.

9 But we can take them in January. We don't need to take
10 an enormous amount of time. But, one, we don't want to see
11 that we take it, it's a preview of cross-examination at trial,
12 and then we get a second and final report with completely
13 different methodology. That's part of our reluctance.

14 But if Your Honor wants us to go forward, you know,
15 with an understanding that we may have to come back to you,
16 then we'll send some deposition notices for January and we'll
17 take them.

18 MR. PRESS: Judge, you pushed us, and we accepted the
19 push. You ordered us to produce these reports, we've produced
20 them, they have had them for four weeks. They've not even
21 asked me when we can make them available. They're available.
22 This could all be done before the calendar year is up.

23 THE COURT: Why wait for January?

24 MR. COHEN: Your Honor, I think if you saw the
25 complexity -- I'd be happy to have you see these reports --

1 see the complexity of these reports and the complexity of the
2 models. I mean, our experts are unpacking their data. It's
3 not just asking what's on the printed page, but voluminous
4 data. These are, obviously, very complicated data. They've
5 analyzed 40 different arbitrations to come up with these
6 probabilities. The amount of supporting data is massive.
7 And, Your Honor, we think, you know, we're reasonable in what
8 we do, but, not surprisingly, we're going to have experts who
9 are going to assist us, and they're digesting the underlying
10 data. If it was just a matter of reading a report, we would
11 have noticed the deposition and taken it, but there are
12 massive and massive quantities of supporting data that you
13 need to unpack these eight different damage models. So that's
14 the reason for waiting until January.

15 THE COURT: I understand now, Counsel.

16 You gave me a list of the people you want to depose,
17 other than the experts, as the CEO of TWA, the then CEO.

18 MR. COHEN: Yes, sir.

19 THE COURT: The CFO; a particular investment banker;
20 Terry Hayes. Who is Terry again?

21 MR. COHEN: The vice president of labor relations,
22 Your Honor.

23 THE COURT: The VP of labor relations. And who
24 else -- oh, Schwartz.

25 MR. COHEN: Schwartz and Hefley, Your Honor.

1 THE COURT: Schwartz and Hefley. That's one, two,
2 three, four, five, six. Any others?

3 MR. COHEN: Yeah, Your Honor, that's what I'm aware
4 of today. I mean, you know, if any of these things led back
5 to somebody else, we'd come back to you, Your Honor, but
6 that's what we're talking about.

7 THE COURT: Well, you know, I don't want this to be a
8 moving target.

9 MR. COHEN: I understand, Your Honor. What I'm
10 saying is --

11 THE COURT: I'm not trying to limit you. I'm just
12 trying --

13 MR. COHEN: No, I understand that, Your Honor.

14 THE COURT: -- at this point to get what the universe
15 is.

16 MR. COHEN: Right. So what I don't know is, when we
17 take Mr. Compton's deposition, if we can't find him or we find
18 him and he says, really the guy who really worked this for us
19 is not the CFO but the treasurer or is the head of
20 strategic -- we want to do the right number of things. It's
21 not a constant moving target. And we'll complete that by
22 January, too, so that will put the onus on us to get it at the
23 end of January -- the end of January to get it done.

24 THE COURT: Well, let me ask you, how much time do
25 you think you need to do these six?

1 MR. COHEN: In terms of time elapsed or per
2 deposition, Your Honor?

3 THE COURT: Well, per deposition I'm going to allow
4 four hours --

5 MR. COHEN: Yes, I'm aware of that.

6 THE COURT: -- absent -- absent some applications
7 where I would suggest you needed more than four. But now I'm
8 talking about a time line.

9 MR. COHEN: So what I'm saying, Your Honor, is I
10 think that we could do those initial depositions of their
11 experts and this discovery by the end of January.

12 THE COURT: And that's the same date you're
13 projecting for getting most of the information?

14 MR. PRESS: It is, Judge. We expect to have most of
15 it well before that.

16 Oh, Mr. Cohen mentioned that he has experts. They
17 haven't been disclosed, Judge. And they've obviously been
18 working with experts. They have a very prominent trial team.
19 They're backed by an international union. For them to say
20 that they need an additional three months to take two
21 depositions, Judge, I just find that incredible.

22 THE COURT: No, no.

23 MR. PRESS: Okay.

24 THE COURT: What about disclosing your experts to
25 them?

1 MR. COHEN: Your Honor, we're working with consulting
2 experts. We haven't settled on our testifying expert. As
3 soon as we do, we'll disclose them.

4 THE COURT: All right. January 31st seems to be a --
5 my current inclination right now is to give you until the 30th
6 of January or the 31st of January to complete these six
7 depositions. Again, the CEO; CFO; an investment banker; Terry
8 Hayes, the labor relations guy; and two pilots, Schwartz and
9 Hefley.

10 Number two, I want you to complete at least the
11 depositions of their two experts by the same date, by the
12 31st. Again, I'm not saying that there couldn't be a
13 follow-up deposition by then. I want you to reveal the
14 identity of your trial experts, not your consulting experts --
15 obviously, you can consult with whoever you want -- by the
16 same date, by the 31st. But I'd like your reports to be by
17 March 15th. In other words, when I say "your reports," their
18 reports, the experts' reports.

19 MR. COHEN: Can I indulge Your Honor for two more
20 weeks to give us the full two months --

21 THE COURT: Okay. March 1st.

22 MR. COHEN: -- March 31st.

23 THE COURT: March 1st I said. You wanted two weeks,
24 so I'm accommodating.

25 MR. COHEN: Two additional weeks, Your Honor.

1 THE COURT: Oh, you want additional weeks. I thought
2 you were criticizing me for being too slow and you wanted to
3 get it in faster than that.

4 MR. COHEN: I would never criticize Your Honor.

5 THE COURT: I have an entire bar that relishes
6 criticizing me, so don't feel bad. Go right ahead.

7 I'm going to stick to March 15th. That's all of
8 January, all of February, all of December. I mean, you have
9 their -- you know, I don't want to get into an argument about
10 the word "final" or not, but you have their reports just
11 absent the -- the data -- the individual data from the
12 individual pilots.

13 MR. COHEN: And, Your Honor, just to be clear, on
14 March 15th I understand we're responding without the setoff
15 and mitigation data to --

16 THE COURT: No, you should have the setoff and
17 mitigation.

18 MR. COHEN: Well, Your Honor, if we don't get it
19 until the end of January -- if they're getting it at the end
20 of January, I think March 15th will be very hard.

21 I thought that Your Honor was talking about their
22 experts responding to the equivalent of the reports they've
23 given us and in which we are taking their depositions, because
24 we're not going to be deposing the Plaintiffs' experts with
25 the benefit of any of that data.

1 MR. PRESS: The offsetting data will be collected by
2 the end of January and it will be assimilated into --

3 THE COURT: Can I ask you this, is there any way that
4 we can stage it? Because even if they got half of the data,
5 let's assume, for a thousand pilots, that would be very
6 helpful to them. I mean, it's true that there would be pilots
7 they don't have, but nevertheless, that's a pretty big sample.
8 It's like a 50 percent sample.

9 MR. PRESS: I'm not dealing with the firm that's in
10 charge of the collection. Maybe Ms. Acchione could address
11 that better.

12 THE COURT: It's your moment in the sun.

13 All I'm suggesting is that clearly -- you know, what is
14 it, the Pareto Principle, 80 percent will come in fast and the
15 remaining 20 percent is going to take up most of the time. Is
16 there any way we can turn over to the Defendant, say, whatever
17 you collect by December 31st so they could have that, make use
18 of that?

19 MS. ACCHIONE: Absolutely, Your Honor. We can do
20 that.

21 MR. COHEN: Your Honor, obviously the earlier we can
22 get the data, that would obviously be helpful, so we're happy
23 to receive it on a rolling basis.

24 MS. ACCHIONE: We can do it on a rolling basis.

25 MR. COHEN: What's not clear to me, when are their

1 experts --

2 THE COURT: Well, I'm going to get to that right now.

3 MR. COHEN: I don't think our experts should have to
4 go first on the entire question of damages net of mitigation
5 and the like.

6 THE COURT: I understand your point, but let me just
7 take it one step at a time.

8 There would be, in effect, a rolling. I certainly
9 think that by December 31st you should turn over everything
10 you've gotten by then, because I suspect that, you know, and
11 it's typical, ultimately, it's going to be 20 percent of the
12 pilots that are going to be a problem in getting information
13 and probably 70, 80 percent will come forth -- I hope will
14 come forth pretty readily. And it would be as if dealing with
15 any group, there will be some small percentage, in terms of
16 80/20, 20 percent for whatever the reason, you know, lack of
17 records, illness, some reason they can't get you what you
18 want. But if you could get it by the 31st of December.

19 Now, second, is it your anticipation that either or
20 both of your experts are going to render a new report in which
21 they integrate the data derived from individual plaintiffs?

22 MR. PRESS: They'll be no change in the methodology.

23 THE COURT: No, no, that's not what I asked.

24 MR. PRESS: There will be a new exhibit with the
25 math, but that would be it.

1 THE COURT: Well, will there be a new report?

2 MR. PRESS: No.

3 THE COURT: Will it just be an exhibit to the
4 existing report?

5 MR. PRESS: Yes.

6 THE COURT: What is it you anticipate? You're going
7 to get all this information.

8 MS. RODRIGUEZ: Judge, if I can, and just if you're
9 looking for a way to stage it, perhaps, Professor Farber --

10 THE COURT: No, I want to know what you plan to do.

11 MS. RODRIGUEZ: Professor Farber is done. He is not
12 the math person. He's not going to crunch the numbers. So
13 his report --

14 THE COURT: So you do not anticipate that Doctor --
15 what's his first name?

16 MS. RODRIGUEZ: Hank.

17 MR. PRESS: Henry.

18 MS. RODRIGUEZ: Henry, Henry Farber.

19 THE COURT: Okay. With Paul Weiss here we've got to
20 be very formal.

21 MS. RODRIGUEZ: Very formal, okay.

22 THE COURT: So you don't anticipate any change in his
23 report as a result of the new data coming in from the
24 individual pilots?

25 MS. RODRIGUEZ: No. His report is totally done and

1 it's -- the data goes to --

2 THE COURT: Now, with respect -- who is the other
3 fellow?

4 MS. RODRIGUEZ: Rikk, and it is Rikk, R-i-k-k,
5 Salamat.

6 THE COURT: R-i-k-k.

7 MS. RODRIGUEZ: Yes.

8 THE COURT: You know, a friend of mine is a judge in
9 rural Arkansas, the western half of Arkansas, named Jimm with
10 two M's, Jimm Larry Hendren, who sits in three different court
11 houses all through western Arkansas.

12 And so this is Rikk, R-i-k-k.

13 MS. RODRIGUEZ: Salamat, S-a-l-a-m-a-t.

14 THE COURT: One T?

15 MS. RODRIGUEZ: One T.

16 THE COURT: Doctor?

17 MS. RODRIGUEZ: Yes.

18 MR. PRESS: No.

19 THE COURT: No? All right.

20 Now, do you anticipate a new report from him?

21 MS. RODRIGUEZ: His report will have numbers in it,
22 but it won't be a new report. He's got a methodology and he's
23 got the "but for" list.

24 THE COURT: If the answer is he's going to just
25 attach an exhibit with a number next to each pilot, that's not

1 a new report.

2 MR. PRESS: That's all that will change, Judge.

3 THE COURT: I mean, if you have a list, Pilot Jones,
4 you know, \$47,322, you know, Pilot Smith, you know, \$63,127,
5 and that's going to be some kind of exhibit attached to the
6 report, that's not really a new report.

7 MR. PRESS: I agree, and you've stated it correctly.

8 THE COURT: That's all it's going to be.

9 MR. PRESS: Yes.

10 THE COURT: He's just going to come up with a list.
11 And what will that number represent? What is it in your mind
12 that number will be? We have Pilot Jones, \$47,233. What is
13 that number going to be? What will that number supposedly
14 represent?

15 MR. PRESS: Actual damages for that class member. I
16 don't know how to say it any more succinctly. That's what
17 that will represent.

18 MS. RODRIGUEZ: It will be his earnings on the "but
19 for" list minus --

20 THE COURT: Which we already have.

21 MS. RODRIGUEZ: Which we have. And we have that
22 number. So Pilot --

23 THE COURT: And they have.

24 MS. RODRIGUEZ: They have it. Pilot Jones is on the
25 "but for" list at \$50,000. We get his setoff income. We find

1 out that he flew for JetBlue and made \$25,000. So that list
2 will be the \$50,000 minus the \$25,000.

3 THE COURT: So, fundamentally, you're just going to
4 add two columns to the existing.

5 MS. RODRIGUEZ: It's math.

6 THE COURT: One column shows, in effect, what without
7 offset would be, then what the offset would be, and then the
8 last column is the net damages.

9 MS. RODRIGUEZ: Correct.

10 THE COURT: And that's the only change. I mean, in
11 his complicated text, we're not getting any changes.

12 MS. RODRIGUEZ: No.

13 THE COURT: Just two different -- two new columns on
14 a schedule that ready exists.

15 MS. RODRIGUEZ: He runs the setoff that he gets
16 through a computer program that he calculated and, yes, it's
17 just arithmetic.

18 MR. COHEN: Your Honor, I just want to just correct
19 one thing.

20 THE COURT: Essentially you got what you asked for.
21 You wanted representation if they're going to change the
22 report. In effect, that's what you got.

23 MR. COHEN: I think you've solved all of our problems
24 but one, Your Honor, if I may.

25 THE COURT: Okay. What's that one? ALPA can afford

1 to pay the bill, so don't worry about that. If that was the
2 problem, put that one aside.

3 MR. COHEN: No, Your Honor.

4 THE COURT: Right, Mr. Katz?

5 MR. KATZ: I'd have to ask the clients about that,
6 Your Honor.

7 MR. COHEN: Your Honor, when they're collecting that
8 data that's at the printer -- maybe it needs to be held up --

9 THE COURT: What they're printing is the request, not
10 the data.

11 MR. COHEN: Right. But what they're not requesting
12 is anything that goes to mitigation, which is the subject of
13 Your Honor's motion.

14 THE COURT: Such as?

15 MR. COHEN: Such as, you know, what kind of request
16 did they put in? Did they take leaves of absence? I mean,
17 we're going to have to collect some information from these
18 plaintiffs about what they did. We don't know, you know, how
19 they bid on their various -- we're going to need information.

20 THE COURT: Well, let me tell you what they plan to
21 give you. Let's get this on the table. I think what they
22 plan is only what we would call offsets, you know.

23 MR. PRESS: Judge --

24 THE COURT: Did you fly for JetBlue, you know, or did
25 you fly for some freight airline? You know, you make X

1 dollars, you know, during what periods? Or did you work
2 outside the airline industry?

3 MR. PRESS: What you say is true, Judge.

4 THE COURT: There is one guy who had a gardening
5 operation. It sticks in my mind there was one guy that became
6 a landscaper. He was a pilot but he had a landscaping
7 business. I don't know why I remember that, but he had a
8 landscaping business in which he earned some money as a
9 landscaper.

10 MR. PRESS: Your Honor, the issues that Mr. Cohen's
11 addressed, we have addressed them in our request. I wasn't
12 inclusive in giving the list.

13 THE COURT: Tell me how you addressed it.

14 MR. PRESS: We've asked for people on maternity
15 leave, for instance, medical leave; people that lost their FAA
16 certificate for some reason. So again --

17 THE COURT: You mean their certificate which allows
18 them to fly?

19 MR. PRESS: Correct. So we have addressed those
20 issues.

21 MR. COHEN: I think they've addressed some of the
22 issues. I'm glad to hear they're getting that data, but there
23 are other issues that are individual. If they're not going to
24 ask for that data, we're going to have to figure out some way
25 to get that information. Again, it makes a difference. You

1 know, it truly makes a difference. So if you were on the
2 list -- and this is the problem with the model, because, you
3 know, the model I understand is a proxy, but, you know, when
4 they say, for example, they're using actual, they're not even
5 using in their models actual earnings data for the pilots.
6 That's not true. Their model --

7 THE COURT: I'm sorry.

8 MR. COHEN: Their model is not taking into account
9 actual earnings for the actual people on the list. It is an
10 aggregate of. For each place on the list they look at a
11 certain number of places above and a certain number of places
12 below and they come up with a proxy for earnings. That's the
13 problem with these models and, you know, we're -- they're
14 going to have to confront these individual issues at some
15 point before trial.

16 THE COURT: Well, we just have to give the Circuit
17 something to do. Van Antwerpen screwed this thing up fairly
18 well and -- so let's -- because he went to North Academy
19 instead of Kramer. Maybe that's going to be for the Circuit
20 to sort out.

21 I mean, no matter what they say they're going to
22 gather, you'll find something they should gather that they're
23 not gathering.

24 MR. COHEN: Well --

25 THE COURT: And I'm not going to let you take 2,000

1 depositions.

2 MR. COHEN: Of course not, Your Honor. And nor would
3 our client. And nor would we ask to do that.

4 But, look, I think that it might be helpful, you know,
5 if we could have a day or two to confer with Plaintiffs and
6 we'll see if there is anything else that is reasonably
7 included in that list.

8 THE COURT: Why don't you do it today. I'm here all
9 day today. I do have another matter, but I'm here --

10 MR. COHEN: We can do that, Your Honor.

11 THE COURT: -- as late as you want. I'm sure we have
12 a conference room or conference rooms we can provide you.

13 MR. COHEN: We're happy to do that, Your Honor.

14 THE COURT: Because at the end of the day, subject to
15 whatever attack might be on a Daubert motion, they're going to
16 present their report the way they want to present their
17 report. They're going to include that information. They have
18 got to provide the information to you and there has to be full
19 disclosure whatever they're relying on, but they're going to
20 decide what they need; their experts are going to say you need
21 this information -- and in a sense they've already said
22 that -- and they're going to present their reports.

23 You'll depose them. And you may say as part of your
24 argument, you know, that these are -- these are inadequate
25 because there are certain other information you didn't get,

1 you know. Well, fine. It's like any other expert's report.
2 We'll argue it out. Your own experts may say that they didn't
3 get this, this, and this, so, therefore, they're unreliable.
4 That could play out either in a Daubert motion or it can play
5 out at trial. It can play out different experts -- you know,
6 one expert says the other expert didn't -- didn't do a good
7 job. I have that all the time, you know.

8 But, obviously, if you can reach some sort of
9 agreement, or even if it's not total agreement, you know, 80
10 or 90 percent agreement, it will make things easier.

11 MR. COHEN: Your Honor, again, in terms of
12 sequencing, it still doesn't -- I don't think it's appropriate
13 for our experts on March 15th to give net damage figures, net
14 of offsets and mitigation, without seeing theirs. So
15 somewhere between --

16 THE COURT: But you are going to see theirs.

17 MR. COHEN: Before March 15th? I don't think Your
18 Honor set a date.

19 THE COURT: Yes, I did. My understanding is that
20 December 31st they're going to send you all the information
21 they have that they have already collected and January 31st is
22 the drop-dead date for everybody.

23 MR. COHEN: Right. When is the date, Your Honor,
24 which we're going to get that schedule from Mr. Salamat that
25 says -- with the net numbers?

1 THE COURT: Well, that schedule should be prepared on
2 an ongoing basis so we can turn things over on the 31st of
3 December. I mean, the schedule should already be prepared as
4 to those -- let's assume it's 60 percent of the pilots, or
5 whatever it is, done by the 31st. For those 60 percent it
6 should already be done.

7 MR. PRESS: And it will be.

8 THE COURT: You understand what I mean? For those
9 extra two columns.

10 MR. PRESS: Knowing pilots and their interest in this
11 case, I suspect we'll have most of the data by the end of this
12 year.

13 THE COURT: I don't know what the percent will be.
14 Whatever the percentage will be, when I say turning over the
15 data, I mean more than just giving raw numbers. I mean the
16 schedule that you anticipate that's going to be annexed to the
17 report should be completed, at least as for those pilots,
18 whether it's 1,000, 1,200, 1,500, where you have that data.

19 MR. PRESS: And then it will be updated to be
20 final --

21 THE COURT: And then on the 31st you are updated for
22 the remaining pilots.

23 MR. COHEN: I appreciate that. I didn't realize,
24 Your Honor. Obviously, that's fine.

25 THE COURT: I'm taking him at his word that basically

1 what we have is sort of a math -- you know, some simple
2 algorithm which creates the two columns --

3 MR. PRESS: Yes, Your Honor.

4 THE COURT: -- on the existing -- in effect, existing
5 schedule we already have.

6 MR. PRESS: Correct.

7 THE COURT: And that you have. And when he turns
8 over the data, it should be with -- with this -- with the
9 schedule expanded for those pilots that we have the data for.

10 MR. PRESS: Yes.

11 THE COURT: And that would be December 31st, which we
12 certainly hope will be way more than half, we hope. And
13 again, I'm taking him at his word that most will be. And
14 whatever the stragglers are, we'll get them in the next month.

15 MR. COHEN: That's very helpful, Your Honor.

16 And our -- and again, if we want to move forward with
17 expedition, it would be helpful if we did not have eight
18 different damage theories. I mean, could the Plaintiffs --

19 THE COURT: I'm sorry. Run that one by me again.

20 MR. COHEN: There are a range of numbers -- I
21 don't -- when our expert is going to submit a report, I don't
22 know whether they're claiming damages of a hundred -- I know
23 they're not 150 million -- 800 million --

24 THE COURT: You're right now attacking the report.

25 MR. COHEN: No, no, no, I'm attacking, Your Honor,

1 that there isn't a damage number. They have refused to
2 actually say, This is our principal damage claim. We are
3 claiming --

4 THE COURT: Maybe I'm losing you. I understand there
5 is out there a schedule. I don't know if it's in the report
6 or not, but it exists and you have it. It lists all the
7 pilots and what they would have earned, in effect, if the
8 union had done, in their view, what the union was supposed to
9 do without regard to any offsets, without regard to whether
10 they flew for JetBlue or flew for a cargo -- some of these
11 guys went to fly for cargo companies. Not passengers, but
12 they were flying, in effect, cargo planes, I believe. I
13 thought we had that.

14 MR. COHEN: Your Honor, here's what we have. We have
15 eight different schedules. We have numbers under something
16 called the fairness model, the arbitration list, the Salamat
17 damage model, the marginal plus two model, Farber seniority 1,
18 Farber seniority 2, Farber seniority 3, Tannen (phonetic)
19 seniority. What I'm asking for is not to respond to eight
20 different damage theories.

21 MR. PRESS: There are different versions of a "but
22 for" world that have been created.

23 THE COURT: Yeah, but basically you can't -- there
24 has got to be a "but for" world that you're going to go with.

25 MR. PRESS: Well --

1 THE COURT: Are you going to tell the jury, I have
2 eight different theories and you pick one of them?

3 MR. PRESS: No.

4 THE COURT: That's what it sounds like to me.

5 MR. PRESS: No, we will not do that. But a point of
6 fact, there may be alternative models presented to the jury.

7 THE COURT: Oh, I'm sure. Well --

8 MR. PRESS: I can tell you it's not going to be
9 eight. But I can't commit that it's going to be one. I don't
10 think that's reasonable, Judge, to hold us to that.

11 THE COURT: No, no. But there has got to be a point
12 that the jury can make a rational -- I mean, the idea of an
13 expert is to express an opinion. And you say that because of
14 the special training and knowledge and background of
15 particularly -- it's in my standard charge to the jury on
16 expert opinion. You know, you explain why you're letting this
17 opinion go and then you tell the jury that they can accept it,
18 but they don't have to accept it. They can accept it or
19 reject it, and you give them some guidance they can consider
20 for accepting and rejecting.

21 MR. PRESS: I understand.

22 THE COURT: You're really raising a different issue.

23 MR. COHEN: What I'm saying, Your Honor --

24 THE COURT: And this is not the same issue, because
25 in extending the columns, you can take any of the eight --

1 once you have the data and the number, you can extend out any
2 one of them.

3 MR. COHEN: What I'm raising, Your Honor, is if
4 you're going to submit reports on March 15th -- I understand
5 they're two different experts. I understand the concept of
6 Expert A has a theory and Expert B has a theory and --

7 THE COURT: Well, Expert A --

8 MR. COHEN: Expert A has four theories and Expert B
9 has three theories.

10 THE COURT: But the first expert, Henry Farber, Dr.
11 Farber, is not -- Dr. Farber is not using numbers. He's not
12 relying on a list of any kind, so he's --

13 MR. COHEN: No, Your Honor, that's not correct. He's
14 creating three different lists. The numbers are being run
15 through by Mr. Salamat, but he actually -- they have seven or
16 eight -- they have eight different lists. You know, and then
17 they're complaining that we're not going forward with our
18 experts. I don't know how we can proceed in any kind of
19 rational basis with eight different lists.

20 THE COURT: Maybe that would be a subject of your
21 expert report. I mean, that may be one of the very things
22 they'll comment on is if they have seven theories, many of
23 which are inconsistent with each other.

24 MR. COHEN: I understand that, Your Honor. But what
25 I'm asking --

1 THE COURT: I'm not saying they are. I'm just saying
2 that that could be what your expert -- I don't know.

3 MR. COHEN: What I'm asking for is that they
4 should -- each expert should tell us what his opinion is with
5 respect to damages. I truly don't know what their damage
6 number is.

7 MR. PRESS: Judge, our opinions have been -- our
8 opinions -- our experts have expressed opinions. There are
9 two very detailed reports. If their experts have an opinion
10 on what the damages were, why don't they tell us?

11 It has no impact on their ability to take a deposition
12 and have an expert articulate an alternative view of what the
13 "but for" world would have been. It really doesn't.

14 THE COURT: Yeah, but an alternative view of what the
15 "but for" world would have been is a different damage theory.

16 MR. PRESS: Of course.

17 THE COURT: The damage theory flows -- whatever it
18 is, it flows from your view of what the "but for" world would
19 have been. I mean, you know, the actual numbers will depend
20 on the numbers from the individual pilots, but at least in
21 gross, a different view of the "but for" world is a different
22 damage figure. I mean, cumulatively it's a different damage
23 figure.

24 MR. PRESS: There is no question about that.

25 THE COURT: I suppose you could have a "but for"

1 world anywhere from total integration, I guess would be one
2 "but for" world. You took the two lists and actually
3 integrated them 100 percent, no stapling.

4 MR. PRESS: Why not put the TWA pilots on the top?

5 THE COURT: And then you have -- well, I suppose you
6 could have backwards. You could have senior to the American
7 pilots. I suppose that's even -- we'll call that reverse
8 stapling, where the American pilots would get stapled to the
9 TWA list. That would be anti-stapling or reverse stapling.
10 But no matter which one of those you choose, the more
11 realistic would be total integration would be the best, if you
12 just took the two lists.

13 And, indeed, the two contracts had different provisions
14 dealing with that very issue.

15 MR. PRESS: True.

16 THE COURT: You might call it the APA -- the APA
17 contract, I believe, called for total integration, did it not?

18 MR. PRESS: Well, there was some debate about what it
19 really provided for, but that was one interpretation, yes.

20 THE COURT: There were different language in the APA,
21 which American had, as opposed to the ALPA contract, which
22 arguably did not have that. Or maybe it was the other way
23 around. I don't know.

24 MR. PRESS: You stated it right, Judge.

25 MR. KATZ: Your Honor, to be precise, the TWA

1 contract --

2 THE COURT: Are you trying to make me be precise, Mr.
3 Katz?

4 MR. KATZ: No, I'm going to be precise.

5 THE COURT: Oh, you're going to be precise.

6 MR. KATZ: The TWA contract did not require any
7 particular result. It required a process that ended in
8 arbitration --

9 THE COURT: Right.

10 MR. KATZ: -- to resolve the integration of the TWA
11 pilots --

12 THE COURT: The American contract did not have
13 arbitration.

14 MR. KATZ: The American contract required all of the
15 incoming pilots be put on the bottom of the American list.

16 THE COURT: But all I'm saying, just to go back, I
17 could -- your experts, not me, could postulate, well, if the
18 union did what it was supposed to do, it would have had one
19 list with no staple point. That, to me, is kind of the top.
20 And then you'd say, well, you know, staple points would be,
21 you know, here, here, here, here. And plus other
22 modifications as well. I don't want to say the staple point
23 was the only one. But each one comes up with a different
24 damage number.

25 MR. PRESS: That's true.

1 THE COURT: And I'd say from no damages -- if you had
2 total integration, probably, in effect, no damages, to -- no,
3 I'm sorry, not no damage, that's the highest damages. And
4 then as you go down in your "but for" world, less and less and
5 less and less and less.

6 All I'm saying, that's grist for your mill.

7 MR. COHEN: No, I understand that, Your Honor. It's
8 just --

9 THE COURT: If you think that they've given you, you
10 know, a mishmash which, you know, maybe you can't
11 come -- take that up.

12 MR. COHEN: All I was trying to say, Your Honor, is
13 given these time frames -- which we will obviously do whatever
14 Your Honor asks us -- to have to respond to eight different
15 models seems like an imposition.

16 THE COURT: Let me put it this way. You can't -- if
17 you've given eight different -- and I'm really leaping way
18 ahead to a trial. If you've given eight different models of
19 possible "but for" worlds, okay, and now it's come time for
20 trial, and he gets on the stand and says, I'm picking Model 3,
21 that's the model that I think is the one that matters, but
22 nowhere in his report has he ever picked Model 3 before or he
23 just said his Model 1, 2, 3, 4, 5, 6, 7, and 8, but now he
24 gets on the stand and says, Model 3 is my model, I'm not going
25 to allow that.

1 MR. PRESS: Of course, Judge. I wouldn't expect you
2 to.

3 THE COURT: You know. So --

4 MS. RODRIGUEZ: And again, Your Honor, with
5 regard -- and I'll just talk --

6 THE COURT: Maybe that's the reason for deposing
7 these folks. One of the reasons you depose them is to pin
8 them down.

9 MR. COHEN: I'm just trying to deal with --

10 THE COURT: It seems to me -- I'm salivating here
11 over the opportunity to depose these guys. This would sound
12 like fun for me.

13 MR. COHEN: Judge, we'll check your schedule.

14 THE COURT: Which of the eight theories is going to
15 be your theory? It sounds like fun for me.

16 MR. COHEN: The thought had occurred to us, however,
17 if what's going to happen in trial, right, is that the witness
18 is going to say, Well, I was deposed and I had thought about
19 it some more and pick one instead of two, three, four --

20 THE COURT: I'm not going to allow that. Well, if it
21 turns out at the deposition he's very, very clear that I'm
22 picking one and you've pinned him down adequately, I'll allow
23 him to testify consistent with his deposition. But what I'm
24 not going to do is let someone give you eight different
25 theories of damages, "but for" models and models of the "but

1 for" world, and then have -- and then have at deposition not
2 pick any one as being the right one and then come up at the
3 trial and say, I'm picking No. 3. That's my model. I'm going
4 with three. That's my model, ladies and gentlemen of the
5 jury. That's what I want you to find the "but for" world
6 would have been.

7 MR. COHEN: No, Your Honor, I --

8 THE COURT: I'm not going to allow that.

9 MR. PRESS: Your Honor, can I --

10 THE COURT: Mr. Press isn't taking issue with me on
11 that.

12 MR. PRESS: Just as a point of fact, Judge, and I
13 didn't want to get into this, but our experts have picked what
14 they think was the most reasonable outcome. They've said
15 that. They've each articulated their opinion.

16 THE COURT: I'm not arguing with you on that. I
17 mean, you may be right. I just don't know.

18 MS. RODRIGUEZ: For instance, Your Honor, again with
19 regard to Dr. Farber, he talks about the "but for" list that
20 he opines on would be the "but for" list, but he talks about
21 having an upper parameter list and a lower parameter list, but
22 they're not three different methodologies.

23 THE COURT: Let me give you an example. I used to do
24 a lot of litigation in real estate, tax appeal and things like
25 that. And you get an MAI report from a person and he'd say,

1 Well, on one theory I would value it this way, another theory
2 I would value it this way. If there is reproduction costs, I
3 would do this. If there was an income, I would do this. When
4 the cap rate was this, I would do this, but if my cap rate was
5 this -- but at the end of the day he says, I put it all
6 together and I find the one that is most reasonable is this.
7 And so he doesn't say, I have seven different valuations which
8 might be. He says, In my opinion, this one is what I think is
9 the value.

10 So, I mean, extrapolating this to this kind of thing, I
11 can see, Well, there is three or four different ways we can
12 come to a number here for a "but for" universe. But when I
13 consider all the pros and cons of each of the methodologies,
14 it's two that I pick. That one I think is the right one.

15 MR. PRESS: That's what happened, Judge.

16 MR. COHEN: Your Honor, we'll proceed with the
17 deposition --

18 THE COURT: I mean, he says that's the one. I don't
19 know. I mean, I don't want to make it -- nothing I say should
20 be construed as my opinion.

21 MR. COHEN: I understand, Your Honor. We'll explore
22 it at the deposition, Your Honor.

23 Your Honor, so we don't have to go back, obviously
24 we're not going to be able to do these depositions in four
25 hours, so I don't know if that is an appropriate time.

1 THE COURT: Isn't it obvious? Oh, you're talking --

2 MR. COHEN: No, the expert.

3 THE COURT: I didn't put four hours on the expert
4 depositions.

5 MR. COHEN: Okay, thank you.

6 THE COURT: I only put the four hours on the CEO,
7 CFO, the labor relations guy, the two class representatives.
8 Just those folks.

9 MR. COHEN: All right. Thank you for the
10 clarification.

11 THE COURT: And the investment banker.

12 Oh, no, I'm going to revisit the issue. I'm uninclined
13 to -- as long as things don't get out of hand, I'm not
14 inclined to put any limit on any of the experts. Either way,
15 them deposing your experts or you deposing their experts.

16 MR. COHEN: I'm sure we'll work out the time of the
17 experts' --

18 THE COURT: I want to be reasonable, but I don't
19 think I can say now that four hours would be adequate or
20 inadequate. I just can't say, so I don't want to put a limit
21 now, you know. I doubt I would put a limit at all, quite
22 candidly, on the experts, the expert testimony. Unless it
23 gets out of hand on the third day or something, you know. I
24 doubt that.

25 Okay. Anything else?

1 MR. PRESS: Nothing from the Plaintiffs, Judge.

2 THE COURT: Well, let me recapitulate what I think.

3 MR. PRESS: Well, wait. While we're here, can we
4 talk about when the Plaintiffs should depose the Defendant
5 expert and any rebuttal experts and the trial date?

6 THE COURT: They're supposed to have it by
7 March 15th.

8 MR. PRESS: Correct.

9 THE COURT: I don't know what a rebuttal expert is.

10 MR. PRESS: I don't know either.

11 THE COURT: I'm very unsympathetic to one expert
12 files a report and the other one files a response to that one
13 and then the other one files a response to that one. He's an
14 expert. He's supposed to give an opinion, you know.

15 MR. PRESS: Judge, I agree with that approach.

16 THE COURT: But right now they're due March 15th. I
17 would like your depositions to be within 30 days, standard --
18 standard final pretrial type of dates.

19 MR. PRESS: Tax day 2013.

20 THE COURT: I normally give 30 days to depose the
21 other side, 30 days after receiving the report to depose the
22 other side's experts.

23 MR. PRESS: That's agreeable to us.

24 THE COURT: All right. Let me just go back over
25 everything so we -- we're on -- and I'll probably try to put

1 this in order.

2 Number one, I'm giving leave to the defense to take the
3 six depositions, the CEO, the CFO, the labor relations guy
4 from TWA, an investment banker, and then two -- were Schwartz
5 and Hefley on the -- originally on the steering committee?

6 MR. PRESS: Mr. Hefley was, Judge.

7 THE COURT: And what about Schwartz?

8 MR. PRESS: No, he was not.

9 THE COURT: Was he a MEC member?

10 MR. PRESS: He was assistant vice chairman.

11 THE COURT: So he was a member of the MEC?

12 MR. PRESS: He was.

13 THE COURT: For what service, for what --

14 MR. PRESS: He was the MEC assistant vice chairman.
15 Vice chairman, I'm sorry.

16 THE COURT: But didn't they have three MECs, one for
17 each of the --

18 MR. PRESS: He was not an elected MEC member. He was
19 a --

20 THE COURT: On which of the three locations? There's
21 St. Louis, New York, and --

22 MR. PRESS: He was an officer, so he's not really an
23 MEC member. MEC officer is the right way to phrase it.

24 THE COURT: All right. Schwartz -- and Hefley was a
25 pilot, but he was a member of the original plaintiffs group.

1 MR. PRESS: That's true. He was also on the merger
2 committee that negotiated with the American pilots.

3 THE COURT: Right. That was kind of an informal --
4 yeah, informal committee.

5 Okay. Those six depositions at four hours a dep are
6 going to be done by the Defendant by January 31st. Okay.

7 No. 2, the documents, the individual offset and
8 mitigation data, will be turned over to the Defendant,
9 whatever exists, on December 31st, and whatever doesn't exist
10 on December 31st will be turned over by January 31st. And
11 it's understood by turning it over we don't mean just turning
12 over just the raw data, but making the mathematical
13 calculations that you say are going to be made and relied upon
14 with the data you're gathering.

15 MS. RODRIGUEZ: Your Honor, can we just move that a
16 day since the deadline is the 31st for the pilots to get it
17 to --

18 THE COURT: Well, it's the same day I intended. I
19 don't know why I said the 30th. I mean the last day of the
20 month.

21 MS. RODRIGUEZ: All right.

22 THE COURT: I'm sorry. I'm missing your point, Ms.
23 Rodriguez.

24 MS. RODRIGUEZ: Our drop-dead date to the pilots was
25 the end of January, so to the extent a pilot gets his

1 information in at 11:59, he's compliant, and so we would need
2 just --

3 THE COURT: When is the drop-dead date?

4 MS. RODRIGUEZ: January 31st. So if we could have
5 February --

6 THE COURT: Why don't you just move it back?

7 MS. RODRIGUEZ: Because it's already at the printer.

8 THE COURT: So change it. You can change anything
9 unless it's actually gone out. Unless it's already been
10 created. I mean, the document hasn't been printed yet. It's
11 just in the computer.

12 MR. PRESS: I got sideways here. I thought at the
13 end of December this year we're going to disclose whatever
14 data we have collected and then we're going to supplement the
15 end of January.

16 THE COURT: No, no, what you're disclosing -- the
17 point I'm making is you're disclosing not just the raw data
18 but the calculations which you're going to make that yields
19 the actual damage figure.

20 MR. PRESS: That's right, and an updated schedule
21 from the expert.

22 THE COURT: What?

23 MR. PRESS: An updated schedule from the expert.

24 THE COURT: Right.

25 Now, by the 31st you're going to get the rest -- I

1 would just move that date back a couple of days so you can do
2 the calculation you have to do.

3 MS. RODRIGUEZ: That's fine, Your Honor.

4 THE COURT: Look, I'm not going to tell you how to
5 collect the data. All I'm going to do is on December 31st, by
6 that day, you've got to give them whatever you've collected,
7 and not just the raw data, but showing how the calculation is
8 made that yields the actual damage number. It's what I call
9 the extra two columns on the schedule. The rest of that
10 information that you get, anything you get up to the 31st,
11 turned over to them in the same way, in the same format.
12 Okay.

13 I want the depositions of Dr. Henry Farber and
14 Mr. Rikk, with two K's, Salamat to be taken by the Defendants
15 by January 31st. And it's, again, understood, if there is
16 something that I haven't kind of conceived of that would mean
17 that the deposition was not effective because there was some
18 information there that was not available, it's a risk we have
19 to take. I may have to order another deposition. So I want
20 to -- I think there is enough, particularly if by
21 December 31st we get most, 80 percent or 70 percent, or even
22 50 percent, you know -- well, that would go a long way to
23 being able to make the deposition meaningful. So I want those
24 two depositions done.

25 By March 15th I want the experts' reports -- first of

1 all, by January 31st I want them identified, the trial experts
2 identified as to who they are. I want their reports in by
3 March 15th, and then I want their depositions done by
4 April 15th. Tax day, April 15th.

5 Okay. Anything else?

6 MR. COHEN: No, Your Honor.

7 MR. PRESS: No, Judge.

8 THE COURT: Okay. All right. Thank you. Thank you
9 all for being here.

10 And I'm just wondering whether I should set another
11 date. You know, I'm going to set a date in early February --
12 I'm going to try to do it now -- for another meeting just
13 to -- because a lot of things should have happened by then and
14 I just don't want to lose total track of things.

15 Do we have a date like very early February?

16 THE DEPUTY CLERK: February 8th.

17 THE COURT: February 8th, 10:00. What day of the
18 week is that?

19 THE DEPUTY CLERK: Friday.

20 THE COURT: All right. It's a Friday. February 8th,
21 okay, here. And given the number of people involved, we'll do
22 it in the courtroom, in this courtroom. Okay?

23 MR. COHEN: Yes, Your Honor.

24 THE COURT: Okay. We'll see.

25

C E R T I F I C A T E

I, Cherilyn M. McCollum, a Certified Court Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.

Certified Court Reporter
XI02094
Notary Public of New Jersey
My commission expires 3-22-16

Dated: _____

United States District Court
Camden, New Jersey

Exhibit 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

FILED

2001 MAR 16 A 9 C.

CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

In Re:

TRANS WORLD AIRLINES,
INC., et al.,

)
)
) Case No. 01-0056
)
)
)

Debtors.

United States Bankruptcy Court
824 Market Street - Sixth Floor
Courtroom No. 2
Wilmington, Delaware

March 9, 2001
9:50 a.m.

-- -- -- --
TRANSCRIPT OF PROCEEDINGS
-- -- -- --

BEFORE: THE HONORABLE PETER J. WALSH, JUDGE.
-- -- -- --

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17

1 Captain Scott A. Schwartz.

2 MR. WEISFELNER: Just so the record is
3 clear. Just an understanding is the witness being
4 presented as a lay witness or is he being presented as
5 an expert witness?

6 THE COURT: I assume he's being presented
7 as a fact witness.

8 MR. MABEY: That's correct.

9 CAPTAIN SCOTT A. SCHWARTZ,
10 the witness herein, having first been
11 duly sworn on oath, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MABEY:

15 Q. Captain Schwartz, please, state your
16 occupation.

17 A. I'm a pilot for TWA.

18 Q. How long have you been a pilot at TWA?

19 A. I'm in my 16th year.

20 Q. And what was your previous education?

21 A. I have a B.A. and an M.B.A.

22 Q. What association represents the TWA airline
23 pilots collective bargaining unit?

24 A. The Air Line Pilots Association, known as ALPA.



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1 Q. Have TWA's pilots elected you to a position in
2 ALPA?

3 A. They have. I'm the vice-chairman of the TWA
4 branch of ALPA.

5 Q. Do you have full access to the financial and
6 operational reports of TWA?

7 A. Yes, we do.

8 Q. Why is that?

9 A. When the airline became employee owned, it was
10 retained that we were allowed to look at the financial
11 statements from the CFO on a routine basis.

12 Q. Do you have assistance in analyzing these data?

13 A. Yes, we do.

14 Q. What is that assistance?

15 A. We have an investment banking group, Michael
16 Glanzer, who is our investment banker. We also have
17 an economic financial analysis department in
18 Washington that assists us in evaluating that
19 information.

20 Q. I call your attention to TWA's two previous
21 bankruptcies which resulted in stand-alone bankruptcy
22 plans. What actions have TWA's pilots taken to make
23 these plans work?

24 A. In 1992, during the first bankruptcy, we took



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1 huge pay concessions. We took 20 percent pay
2 concessions as well as giving up our A plan or our
3 defined benefits plan. In 1994, we gave huge work
4 rule concessions. We became the most efficient
5 productive pilot group in the industry. We also
6 created a productivity task force where we helped the
7 company find efficiencies and run the airline more
8 efficiently and smarter.

9 Q. By your observation during this period of time,
10 also in an effort to support stand-alone plans, what
11 actions did you observe the company to take?

12 A. I believe the company did many things. They
13 tried several schemes: taking seats out of airplanes
14 to create more leg room, putting seats back in to
15 create more cash flow, different marketing plans,
16 different utilization of the hub, adding to other
17 banks. I believe there was a myriad of efforts to
18 improve the airline.

19 Q. Captain Schwartz, notwithstanding these
20 actions, has TWA had a profitable year in the last
21 decade to the best of your knowledge?

22 A. They have not.

23 Q. Does ALPA believe that a stand-alone plan for
24 TWA can succeed?



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1 A. No, we do not.

2 MR. WEISFELNER: Objection.

3 THE COURT: What's the objection?

4 MR. WEISFELNER: I don't know how this
5 witness can necessarily stand here and tell us what
6 ALPA believes. He hasn't laid that foundation nor do
7 I know how a fact witness is going to give us that
8 sort of an opinion based on -- I haven't even heard
9 his involvement in anything beyond he has access to
10 financial information and he employs an investment
11 banker. And I don't know why it's relevant either.

12 THE COURT: Well, I think he indicated
13 he's vice chair of some group and has some access to
14 management information. It's not clear to me whether
15 he's expressing his own opinion or whether he's
16 expressing the opinion of a constituency that he
17 represents.

18 MR. MABEY: Thank you, Your Honor.

19 BY MR. MABEY:

20 Q. Captain Schwartz, are you the vice chair of the
21 TWA ALPA group?

22 A. Yes, I am.

23 Q. And are you authorized to speak for them here?

24 A. I am.



1 Q. Does ALPA believe that a stand-alone plan of
2 reorganization for TWA can succeed?

3 A. No, we don't.

4 Q. And in addition to the reasons you've given,
5 citing efforts already undertaken in that behalf, are
6 there other reasons ALPA holds this belief?

7 A. Our view is that an airline with four percent
8 of the market share, with a weak hub in St. Louis,
9 having the worst O and D statistics in the industry,
10 origination and destination traffic, we believe with
11 an overstrained airport in St. Louis, along with the
12 Karabu plan putting downward pressure on ticket
13 prices, it's not a stand-alone option.

14 Q. You've testified that, just now, that ALPA
15 believes a stand-alone plan can't succeed. But isn't
16 it true that ALPA tried to help put together a
17 stand-alone plan at the end of last year?

18 A. That's correct.

19 Q. What was that plan called?

20 A. The self-help plan.

21 Q. Was that plan ever finalized?

22 A. It was not.

23 Q. Why is that?

24 A. Well, prior to the winter of this last year



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1 there was an effort, based on the pro forma cash
2 position -- efforts were needed to be done from the
3 stakeholders to get through the winter. That would
4 require labor concessions. It would require lessor
5 concessions, and it would require the refinancings of
6 the cash receivables financings. All of those
7 components need to be facilitated to create a savings
8 to get through the winter. None of those things came
9 to fruition.

10 Q. Were you involved personally in those efforts
11 and negotiations?

12 A. At some level I was.

13 Q. If everything had come together, what good
14 would it have done?

15 A. Our view is, worst case, we could have survived
16 two or three months; best case, we could have survived
17 to the next winter, but not through the next winter.

18 Q. Would the self-help plan have made TWA
19 profitable?

20 A. No way.

21 Q. Why did you join TWA in 1985?

22 A. In 1985, TWA was a premier carrier. TWA was
23 the biggest airline going across the North Atlantic.
24 TWA's pay scales for pilots were higher than that of



1 American Airlines. Our pilot group was, roughly, the
2 same size of American Airlines. It was a good company
3 back in 1985.

4 Q. By your observations and your organization's
5 observations, when did TWA's problems develop?

6 A. They began when Icahn took over the airline in
7 1986. He bled the airline of cash by taking the
8 airline private, paid himself back for the
9 transaction. The two subsequent bankruptcies left the
10 airline weaker. The selling of the London routes made
11 the airline weaker. By the time Icahn left, TWA was
12 nothing like the airline I came to work for in 1985.

13 Q. If Mr. Icahn is affiliated with a stand-alone
14 TWA plan which seeks labor concessions, what will be
15 the reaction of TWA's pilots?

16 MR. WEISFELNER: Your Honor, objection.

17 THE COURT: That calls for speculation.
18 You can ask him what his reaction will be.

19 BY MR. MABEY:

20 Q. I ask you what your reaction --

21 A. Your Honor, my reaction would be extremely
22 negative. I would not fly for an Icahn entity.

23 Q. What would the reaction of your organization
24 be?



1 A. Similar to mine.

2 Q. Are there other jobs available for pilots --

3 A. Yes.

4 Q. -- who are dissatisfied with TWA?

5 A. There is a pilot shortage going on right now.

6 Q. Suppose the plan were to reduce the number of
7 pilot jobs from the present approximately 2400 to,
8 say, 1510, what would be the response -- what is the
9 response of you and the Air Line Pilots Association to
10 that proposal?

11 A. Well, that would certainly exacerbate the
12 situation. That would create a situation where
13 captains would get 50 percent pay-cut by going down to
14 co-pilots and then would be furloughed. It would make
15 things a disaster, more disastrous.

16 Q. One of the labor concessions currently sought
17 by the TWA Acquisition Group, I represent to you,
18 would require the pilots to work substantially more
19 for the same pay. What is your reaction and the
20 reaction of the Air Line Pilots Association to this
21 proposal?

22 MR. WEISFELNER: Your Honor, I object.
23 The representation by the examiner is that it's
24 "substantially" more hours. I don't know that it's



1 appropriate to solicit a reaction to a proposal that
2 says you'll work substantially more hours for less
3 pay. I tell you right now, I don't like it. We have
4 stipulated that no one is going to like it. But I
5 don't know how it's relevant to the proceedings before
6 you because he doesn't have any facts or figures.

7 THE COURT: I don't understand the basis
8 of the question.

9 MR. MABEY: I represent to the witness,
10 Your Honor, that there is as of yesterday a TWA
11 Acquisition Group terms sheet which proposes to
12 increase the amount of hours worked by pilots without
13 increasing the pay. I ask now the witness what the
14 reaction of the Air Line Pilots Association is to this
15 proposal and his personal reaction.

16 MR. WEISFELNER: And, Your Honor, I think
17 again we need a bunch of foundation. He said there
18 was a terms sheet that was presented yesterday. We
19 don't know that this witness has had an opportunity to
20 review the terms sheet, yet alone his organization,
21 yet alone to determine what, if any, reaction his
22 organization has.

23 Your Honor, this is exactly why the sort
24 of testimony without the benefit of a deposition in



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1 advance is so terribly prejudicial. Your Honor, I
2 repeat my objection to this entire course of testimony
3 and, in particular, to these sort of questions where
4 we're supposed to extrapolate from one witness'
5 testimony an entire organization's reaction based on
6 hypotheticals that have no detail.

7 MR. MABEY: May I respond, Your Honor?

8 THE COURT: You can proceed if you lay a
9 foundation with the type of questions that counsel
10 just suggested.

11 MR. MABEY: Your Honor, I state the fact
12 subject to it being established later in testimony.

13 BY MR. MABEY:

14 Q. And I ask you, captain Schwartz, are you aware
15 of proposals which have been made with respect to
16 pilot concessions under a TWA Acquisition Group
17 proposal?

18 A. Yes, I am.

19 Q. And how are you aware of them?

20 A. I have seen them.

21 Q. And have you seen a document when you say you
22 have seen them?

23 A. I have seen some paper with writing on it.

24 Q. When did you see that?



1 A. Today.

2 Q. Did those papers speak of requiring 70 hard
3 hours of pilot work?

4 A. I did not see that section.

5 Q. And have you had an opportunity to discuss
6 these proposals with the governing body of the Air
7 Line Pilots Association?

8 A. Yes, I have.

9 Q. And what is the position of the Air Line Pilots
10 Association with respect to this proposal?

11 MR. WEISFELNER: With respect to what
12 portion of the proposal? Your Honor, I object again.
13 He hasn't demonstrated that he discerns what any
14 elements of the proposal is.

15 THE COURT: I assume he's talking about
16 the pilot concessions on time.

17 MR. WEISFELNER: This witness just
18 testified that he doesn't know what the concessions
19 are. He saw documents, but he hasn't read the
20 documents to tell him what the concessions are. He's
21 had a representation from counsel --

22 THE COURT: All right. Ask him what
23 concessions he's aware of.

24 BY MR. MABEY:



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1 Q. What concessions with respect to pilot work
2 hours for no additional pay are you aware of, Captain
3 Schwartz?

4 A. I'm simply aware there would be an increase in
5 flying for the same pay.

6 Q. Does the Air Line Pilots Association have a
7 position with respect to such a condition, if
8 required, requested, or imposed by the TWA Acquisition
9 Group?

10 A. Besides being opposed to it, it's impractical.
11 We're already flying up against the FAA limitations.
12 We're already the most productive pilot group in the
13 industry. We couldn't fly any more if we wanted to.

14 Q. Why is that true?

15 A. Because of our demand staffing because of the
16 contract that we did in 1994 pursuant to the last
17 bankruptcy.

18 Q. Well, are the pilots, in effect, working
19 overtime?

20 A. Yes. We're working overtime to mitigate our
21 already low pay.

22 MR. MABEY: May I approach the witness and
23 the bench, Your Honor?

24 THE COURT: Yes.



1 (Pilots' Exhibit No. 1 was marked for
2 identification.)

3
4 BY MR. MABEY:

5 Q. Captain Schwartz, I show you what has been
6 marked for identification as Pilot's Exhibit No. 1 and
7 ask you if you can identify this document.

8 A. Yes, sir.

9 Q. What is it?

10 A. It's a resolution that was passed yesterday in
11 Wilmington by our governing body.

12 Q. Were you present at that time?

13 A. I was.

14 Q. Would you read the portions in bold at the
15 bottom, please?

16 A. "Therefore, be it resolved that the TWA master
17 Executive Council of the Air Line Pilots Association
18 representing all of TWA's pilots are opposed to TWA
19 Acquisitions Group getting control of TWA; and be it
20 further resolved, that TWNEC is vehemently and
21 unequivocally opposed to any contractual concessions
22 to Carl Icahn or any Carl Icahn entity. Passed,
23 unanimous voice vote."

24 MR. MABEY: I move the admission of



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1 Pilots' Exhibit No. 1.

2 THE COURT: Any objection?

3 MR. WEISFELNER: No objection.

4 THE COURT: Admitted.

5 (Pilots Exhibit No. 1 was received in
6 evidence.)

7 BY MR. MABEY:

8 Q. Captain Schwartz, does ALPA support the
9 American bid?

10 A. Yes, we do.

11 MR. MABEY: No further questions.

12 THE COURT: Cross-examination.

13 MR. WEISFELNER: Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MR. WEISFELNER:

16 Q. I believe you testified that --

17 THE COURT: Mr. Weisfelner, would you take
18 the podium, please?

19 BY MR. WEISFELNER:

20 Q. Captain Schwartz, you testified that things are
21 very rosy at TWA. Is that correct?

22 A. That's correct.

23 Q. Why do you stay employed there? Let me restate
24 the question. There is a glut of opportunity for you



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1 guys. That was your testimony. If you are not happy (
2 at TWA because of all the things that happened to you
3 dating back to the early '90s, why don't you leave?

4 A. I didn't say I wasn't happy.

5 Q. You said it was -- you didn't say you were
6 happy. You didn't say you were unhappy.

7 Let's talk about the self-help plan. How
8 many dollars worth of concessions, if you can recall,
9 was TWA's management looking for from its labor force?

10 A. I don't recall the aggregate number.

11 Q. Can you recall how much they were looking for
12 from the pilots?

13 A. As much as they can get.

14 Q. Do you remember the dollar amount?

15 A. Not exactly.

16 Q. Do you remember it within a range?

17 A. Between 15 and 25 million, somewhere in that
18 range.

19 Q. Say again.

20 A. Between 15 and 25 million.

21 Q. Were those in W-2 reductions?

22 A. No.

23 Q. So they were in productivity enhancements?

24 A. That's correct.



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1 Q. They were looking for more hours of work for
2 less pay, for the same pay?

3 A. They were looking at a myriad of things.

4 Q. Were they, among the myriad of things, looking
5 for more hours for the same pay?

6 A. I don't recall that.

7 Q. Oh. Do you recall whether or not whatever they
8 were looking for by way of concessions would have
9 bumped you up against FAA regulations?

10 A. We're already bumped up against FAA
11 regulations.

12 Q. How many hours a month does the FAA regulations
13 provide that you can't work beyond? What's the limit?

14 A. 100 hours.

15 Q. 100 hours a month?

16 A. That's correct.

17 Q. And how many hours a month, not including
18 overtime, did you fly last month?

19 A. I'm a full-time union person. I didn't fly at
20 all last month.

21 Q. You didn't fly at all. How much would a
22 typical pilot fly in a month?

23 A. I would say between 75 and a hundred hours a
24 month.



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1 Q. At TWA?

2 A. Yes.

3 Q. That includes overtime or excludes overtime?

4 A. Includes over time.

5 Q. Excluding overtime, how much does a standard
6 pilot at TWA fly?

7 A. Well, you can't exclude overtime. It's not
8 officially overtime. We don't call it that. We can
9 fly up to a hundred hours a month. We can get paid
10 beyond that. Our average line value is around 75
11 hours, but we can certainly fly more than that to
12 mitigate our low pay. And we do that whenever we get
13 the chance.

14 Q. How much do you get paid?

15 A. On what basis?

16 Q. On a monthly basis. What do you make a month?

17 A. I make about --

18 MR. MABEY: Objection. Irrelevant.

19 THE COURT: Overruled.

20 A. I make about \$11,000 a month.

21 Q. Where are you, relatively speaking, on the
22 seniority list?

23 A. The top third.

24 Q. The top third. Are you going to accept



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1 employment offered by American under the American
2 asset acquisition proposal?

3 A. Yes.

4 Q. Will you fly for American?

5 A. Yes.

6 Q. Okay. And tell us what agreements you've reach
7 with American and their union as to where your
8 relative seniority will be slotted into their unions?

9 A. We haven't negotiated that yet.

10 Q. Pardon me?

11 A. We don't know that.

12 Q. How much of your union membership, therefore,
13 is going to be going over to American Airlines and
14 happily without knowing they're going to get slotted
15 in seniority-wise?

16 A. All of them.

17 Q. You can speak for all of them?

18 A. It's my view.

19 Q. It's your view that they ought to. Even people
20 who are dramatically below you on the seniority list?

21 A. Sure.

22 Q. If American tells you have to get slotted in at
23 the bottom of their seniority list, you are okay with
24 that?



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1 A. That's a negotiation.

2 Q. I'm saying if they were to tell you that you
3 had to get slotted in at the bottom of their seniority
4 list, would that be okay?

5 A. I don't know. I would have to make that
6 decision at that time.

7 Q. What factors would go into the equation as to
8 whether you would be happy with that?

9 A. There are conditions and restrictions that
10 would go along with that. There would be pay issues,
11 how I-

12 Q. Suppose you had an alternative form of
13 employment where you could maintain your seniority and
14 maintain your W-2 pay scale, would that be among the
15 factors you'd consider in making this future
16 determination as to whether you were happy with an
17 American transaction where you lost your seniority?

18 A. Not if it was a guaranteed loser. American
19 offers us security. It's a complete solution. This
20 other solution is just going put us out of work.

21 Q. That's based on the review of the documentation
22 that you did this morning?

23 A. No. That's based on years of observing TWA in
24 the shrinking market share knowing TWA does not work



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1 as a stand-alone carrier.

2 Q. Nevertheless, you stand there month in month
3 out drawing your salary?

4 A. That's correct.

5 Q. Now, you said TWA was the most productive
6 airline in the industry?

7 A. I said our work rules, the TWA work rules are
8 the most productive in the industry for the kind of
9 airline that we are as a major carrier.

10 Q. Are your work rules more or less productive
11 than those in effect Southwest Airlines?

12 A. Very similar. We modeled our contract with
13 Southwest Airlines.

14 Q. In terms of hard hours per pilot, who is more
15 productive, TWA pilots or Southwest Pilots?

16 A. I don't know.

17 Q. Would you be prepared to become as productive
18 as a Southwest pilot?

19 A. In my view we already are as productive as a
20 Southwest pilot.

21 Q. If I were to represent to you that under the
22 TWA asset acquisition proposal, you are not being
23 asked to be any more or less productive than the
24 pilots are at Southwest Airline?



1 A. It's not an issue of productivity. It's an
2 issue of job security.

3 Q. I thought you told us on direct that what you
4 were concerned was having to work more hours for less
5 money. It really comes down to job security. Is that
6 what you are saying?

7 A. In my view.

8 Q. That's the whole bottom line --

9 A. No, it's not.

10 Q. You are here to tell us the reason -- the
11 reason why you are opposed to the asset acquisition
12 proposal advanced by TWA Acquisition Group is because
13 of job security?

14 A. No, it's not.

15 Q. What job security did you have last year? Let
16 me rephrase the question. When did you first become
17 concerned that TWA could not survive as a stand-alone
18 operation? When did that realization occur to you?

19 A. That has realization become more and more
20 obvious as time has gone by.

21 Q. When did it first occur to you, sir?

22 A. It first occurred to me during the Icahn
23 privatization that the airline was in jeopardy, that
24 our survival was in jeopardy.



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1 Q. That was how many years ago?

2 A. It's '90 -- I can't recall what year it was.

3 Q. But since it first occurred to you that you
4 should be concerned about your job security you have
5 seen TWA go in and out of two separate Chapter 11
6 cases. Right? You weren't enough about your job
7 security at that time to leave your \$11,000 a month
8 55-hour work a month job to secure your job someplace
9 else?

10 MR. MABEY: Objection, Your Honor. The
11 question misstates facts.

12 THE COURT: You say \$11,000 a month back
13 to '92. I'm not sure that's his testimony.

14 MR. WEISFELNER: Let me restate the
15 question.

16 THE COURT: 50 hours a week. I don't know
17 where that came from.

18 MR. WEISFELNER: A month.

19 THE COURT: A month.

20 MR. WEISFELNER: Let me restate it.

21 THE COURT: I'm thinking of lawyers, I
22 guess.

23 MR. WEISFELNER: Hours a week is right.

24 BY MR. WEISFELNER:



1 Q. Captain Schwartz, you tell us that your primary (
2 concern about the alternative transaction is job
3 security because you have a concern about whether or
4 not TWA can remain viable as a stand-alone enterprise.
5 Am I correctly characterizing and, in effect,
6 summarizing your testimony?

7 A. That is a concern, major concern.

8 Q. And I'm asking you how is the prospect any
9 different in connection with this alternative being
10 presented as you've, in effect, lived through over the
11 last ten years in two bankruptcies?

12 A. There's an option of a complete solution with
13 the American bid. There is an option of continued
14 misery with this other bid.

15 Q. By the way, didn't the TWA pilots support the
16 Icahn privatization?

17 A. No.

18 Q. It didn't support the Icahn privatization?

19 A. Not that I know of.

20 Q. It's your testimony, sir, that the TWA pilots
21 did not support the Icahn privatization?

22 A. That's my recollection.

23 Q. What are the FAA maximums again in terms of
24 number of hours flown a month?



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1 A. 100 hours a month.

2 Q. Okay. On average, how many hours a month do
3 TWA pilots fly?

4 A. I don't know that number.

5 Q. That wouldn't be applicable to you, sir,
6 because you don't fly. Correct?

7 A. I am qualified, but I haven't flown in several
8 months.

9 Q. Tell us, in terms of the TWA Acquisition Group
10 proposal, what does it assume with regard to expansion
11 with regard to additional hubs for the airline?

12 A. I'm sorry. I don't understand the question.

13 Q. What assumptions are contained in the TWA --
14 I'll call it the Icahn group proposal so it's easier,
15 for you to recall -- in the Icahn group proposal that
16 you have seen or heard about, what are the underlying
17 assumptions with regard to development of additional
18 hub cities?

19 A. I heard something about some expansion of hub
20 cities.

21 Q. Beyond that do you know any of the details of
22 the assumption?

23 A. No, no, no.

24 Q. What are the assumptions about number of hard



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1 hours of additional flying that pilots would be asked (
2 to do for the same pay?

3 A. I don't know the specifics.

4 Q. And what are the assumptions about injection of
5 additional equity capital into the corporate
6 structure?

7 A. My view, it doesn't change the structural
8 problems.

9 Q. I'm asking what you can tell us about the
10 underlying amount of equity new TWA would have
11 following a reorganization.

12 A. I don't know.

13 Q. You don't know. How much cash would the new
14 enterprise have?

15 A. I don't know.

16 Q. Who would manage the airline operationally?

17 A. I don't know.

18 Q. What new route structures would the airline
19 fly?

20 A. I don't know.

21 Q. What would its fleet components be? What
22 planes would it fly?

23 A. I don't know.

24 Q. What do you know about the proposal other than



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1 Mr. Icahn is going to finance it?

2 A. It's a stand-alone plan. It calls for labor
3 concessions. And it can't work.

4 Q. And you base your prediction that it can't work
5 based on what analysis?

6 A. Based on 15 years of experience.

7 Q. As a flying pilot?

8 A. As a flying pilot observing the industry.

9 Q. And all the efforts that the pilots have made,
10 historically and as recently as December, to, in
11 effect, self-help the airline, those were all for
12 naught, in your opinion, and in fact they were
13 wrong-headed to begin with?

14 A. Would you rephrase that?

15 Q. Your organization has committed time and
16 effort, has it not, to assist TWA's management, after
17 Icahn was long gone, in assisting the airline in a
18 self-help program. Correct?

19 A. Right. Our view is to help the airline survive
20 to get to a complete solution, which American Airlines
21 brings.

22 Q. To what extent are you aware of whether or not
23 the Icahn group proposal like-wise attempts to allow
24 the airline to survive long enough to a final



1 solution? Like a merger or another consolidation with
2 another airline but on better economic terms.

3 A. A bad experience of two other bankruptcies and
4 privatization.

5 Q. A bad experience. But you really don't know
6 the details of what our proposal is, do you, sir?

7 A. That's correct.

8 MR. WEISFELNER: No further questions.

9 THE COURT: Anyone else for
10 cross-examination?

11 Any redirect?

12 REDIRECT EXAMINATION

13 BY MR. MABEY:

14 Q. Captain Schwartz, is there anything in the
15 cross-examination of you this afternoon which changes
16 your view or ALPA's official view with respect to
17 Pilots' Exhibit 1, which has been introduced in
18 evidence?

19 A. Absolutely not.

20 MR. MABEY: No further questions.

21 THE COURT: Anything else for this
22 witness?

23 MR. WEISFELNER: No.

24 THE COURT: You may step down.



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Exhibit 3

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PATRICK BRADY, et al.,

Plaintiffs,

v.

AIR LINE PILOTS ASSOCIATION,

Defendant.

HONORABLE JOSEPH E. IRENAS

CIVIL ACTION NO. 02-2917
(JEI)

CASE MANAGEMENT ORDER

APPEARANCES:

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Counsel for Defendants

IRENAS, Senior District Judge:

This matter having come before the Court upon a status conference held on November 15, 2012; the Court having considered the parties' positions; and for good cause appearing;

IT IS on this 15th day of November, 2012,

ORDERED THAT:

1. ALPA may take the depositions of six former TWA executives and employees connected with the American Airlines merger before January 31, 2013. These depositions shall be limited to four hours each.
2. ALPA shall take the depositions of Plaintiffs' two experts, Dr. Henry Farber and Mr. Rikk Salamat, before January 31, 2013.
3. ALPA shall identify its trial experts no later than January 31, 2013.
4. ALPA's shall serve its expert reports on Plaintiffs by March 15, 2013. Plaintiffs shall take the depositions of

these experts before April 15, 2013.

5. On or before December 31, 2012, Plaintiffs shall turn over all set-off data in their possession at that time to ALPA. This data should take the form of updated damages schedules. Plaintiffs will turn over all remaining data no later than January 31, 2013.

/s/ Joseph E. Irenas

JOSEPH E. IRENAS, S.U.S.D.J.

Exhibit 4

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*NOT ADMITTED TO THE NEW YORK BAR

January 17, 2013

Via ECF

The Honorable Joseph E. Irenas, S.U.S.D.J.
United States District Court for the District of New Jersey
Mitchell H. Cohen Federal Building & U.S. Courthouse
1 John F. Gerry Plaza, Room 310
Camden, NJ 08101

**Re: *Brady, et al. v. Air Line Pilots Association, Int'l*
Civil Action No. 02-2917 (D.N.J. Camden) (JEI)**

Dear Judge Irenas:

We write in response to plaintiffs' letter of yesterday afternoon requesting a conference with the Court to address plaintiffs' motion for a protective order. In that motion, plaintiffs seek to prevent the depositions of two fact witnesses, John Hefley and Scott Schwartz, that the Court has already expressly authorized.

Pursuant to the Court's November 15, 2012 Order, ALPA is subject to a January 31, 2013 deadline for completing the depositions of Hefley and Schwartz, as well as the depositions of four additional TWA-related witnesses and plaintiffs' two experts. (Nov. 15, 2012 Order ¶¶ 1, 2.) As the Court recalls, this Order was issued following the November 15, 2012 Status Conference, during which ALPA sought and obtained the Court's permission to depose Hefley, Schwartz, and the other witnesses. (Nov. 15, 2012 Status Conference Tr. at 71; Nov. 15, 2012 Order ¶ 1.) During the Status Conference, Plaintiffs' counsel expressly stated that he had "no objection to the TWA discovery [ALPA] seek[s]." (Nov. 15, 2012 Tr. at 33.) And plaintiffs raised no objections at any

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The Honorable Joseph E. Irenas, S.U.S.D.J.

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time in the nearly two months that followed, even though the parties appeared again before the Court on January 4 in connection with defendant's motion to amend.

At the November 15 Conference, I detailed for the Court the reasons ALPA proposed to take these depositions, which are independent of their membership in the plaintiff class. (Nov. 15, 2012 Status Conference Tr. at 19-27.) Specifically, I explained that these witnesses would provide testimony demonstrating that "TWA had no options" and "was on the verge of bankruptcy," issues that go to the heart of plaintiffs' damages theory. (Nov. 15 Tr. at 26.) To support their theory of damages, plaintiffs' experts assert that the TWA pilots could have negotiated a better seniority integration list with the Allied Pilots' Association ("APA") because, they assume, the TWA pilots' "reasonable [pre-transaction career] expectations" were relatively high.

By virtue of their positions on the TWA Master Executive Council ("MEC"), Hefley and Schwartz have factual information relevant to this foundational assumption for the plaintiffs' expert reports. Schwartz was the Vice Chairman of the TWA MEC and even offered testimony during TWA's bankruptcy proceeding in support of American Airlines' acquisition of substantially all of TWA's assets. Hefley served on (and authored the minutes of) the TWA MEC's Merger Committee, which was charged with negotiating with the APA regarding seniority integration. We thus made clear at the conference that we were seeking to depose these witnesses not in their capacities as class members, but as percipient fact witnesses. In particular, in view of their positions, both witnesses are expected to have knowledge concerning, among other things, (i) TWA's perilous financial condition at the time of the transaction, (ii) the absence of any viable alternatives to American Airline's proposed asset acquisition, and (iii) the history of the negotiations between representatives of the TWA MEC and the APA regarding seniority integration. All of these issues bear directly on the viability of plaintiffs' speculative and counter-factual damage models. Notwithstanding their awareness of our rationale for these depositions and the status of Hefley and Schwartz as non-representative members of the class, Plaintiffs' counsel expressly stated at the Status Conference that he had no objections to this discovery. (Nov. 15, 2012 Tr. at 33.)

Moreover, when ALPA thereafter served plaintiffs' counsel, in their capacity as counsel for the class, with subpoenas for the depositions of Hefley and Schwartz on December 28, 2012, plaintiffs did not object on grounds of relevance or otherwise suggest they planned to seek a protective order. Instead, Plaintiffs' counsel told us that they (i) had no authority to accept service on behalf of class members; (ii) were not willing to contact Hefley or Schwartz to seek their authorization to accept service; and (iii) did not even know how to get in touch with Hefley or Schwartz, notwithstanding that they had recently finished mailing questionnaires to all class members. Plaintiffs' counsel therefore insisted that we serve Hefley and Schwartz personally. Accordingly, on January 8, 2013, we served Plaintiffs' counsel with notices of subpoenas for both witnesses and undertook to make personal service. Plaintiffs' counsel then waited an additional 2 days, until January 10, 2013, to file this motion.

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The Honorable Joseph E. Irenas, S.U.S.D.J.

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Based on the date when Plaintiffs' counsel filed their motion, this Court's local rules provided that the motion date would be February 4. Plaintiffs' counsel doubtless appreciated that—due to their needless and inexplicable decision to wait nearly two months after learning of our intent to depose Hefley and Schwartz before filing this motion—the motion date was 4 days *after* the deadline this Court had established for ALPA to complete their depositions.

As plaintiffs' letter acknowledges, ALPA has now managed to serve both Hefley and Schwartz with the subpoenas for their depositions. Hefley and Schwartz have each responded, indicating their willingness and availability to be deposed before the January 31 deadline. Hefley indicated that he is available on January 28, 29, or 30, and Schwartz indicated his availability on the date noticed in the subpoena, January 25. As we indicated in an email to plaintiffs' counsel, ALPA would like to proceed with these depositions in accordance with the schedule imposed by the Court. We also advised plaintiffs' counsel by email that ALPA planned to address the scheduling issues in its opposition to plaintiffs' pending motion for a protective order, but plaintiffs' counsel evidently decided to preempt that filing with the letter it sent yesterday.

Contrary to the suggestion of plaintiffs' counsel that ALPA somehow was trying to moot their motion by proceeding with the Hefley and Schwartz depositions before the Court had an opportunity to resolve the pending motion, ALPA had planned to propose an expedited briefing schedule. In particular, ALPA plans to file its opposition to plaintiffs' motion later today, significantly in advance of the January 22 due date prescribed by the Court's local rules. We would respectfully propose that plaintiffs file any reply by January 22, in the hope that doing so would permit the motion to be resolved prior to the scheduled depositions.

In the alternative, should the Court require additional time to consider and resolve this motion, we would respectfully request that the Court extend our time to complete these depositions.

Respectfully,

A handwritten signature in cursive script, appearing to read "Jay Cohen / JEC".

Jay Cohen

cc: All counsel of record (via ECF)

Exhibit 5

Chewning, Kerri

From: John Hefley [REDACTED]
Sent: Monday, January 14, 2013 11:07 AM
To: Chewning, Kerri; 'Allen Press'; Connell, John
Subject: Note from John Hefley re: deposition

To:

Kerri E. Chewning
John C. Connell
Allen Press

Dear All:

This weekend I was served with a subpoena for deposition in Burlington, Vermont pursuant to Patrick Brady, et al vs. Air Line Pilots Association, International.

I am writing to advise that I am unavailable on the date specified, as I will be making my way back to the east coast from a 7-day round trip to Hong Kong at the time specified in the subpoena.

Having said that, I WILL be available the following week on 28, 29, or 30 January 2013. If you are not available on any of those dates, I will be happy to reschedule once I have my February schedule, which should occur Wednesday 16 January 2013.

I'll be happy to reschedule either via email or telephone at your convenience.

[REDACTED]
[REDACTED]

All the Best,
John Hefley